AN OUTLINE OF
JUDICIAL GOVERNMENT
CHESTER C. MANEY

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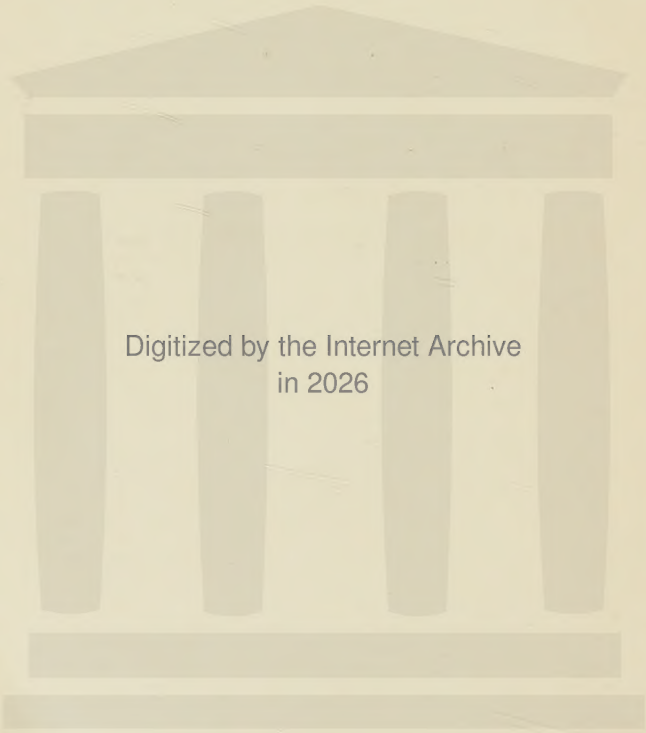
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AN OUTLINE OF MUNICIPAL GOVERNMENT

An Outline of Municipal Government

By

Chester C. Maxey, Ph.D.

Associate Professor and Acting Head of the Department of Political Science, Western Reserve University

Garden City New York
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1924

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PREFACE

WHEN the material contained in this book was first put into written form it was not supposed that it would ever be published. My practice in the teaching of municipal government has always been to supply the students with a syllabus or outline of the course, to confine their reading as far as possible to primary source materials such as reports, surveys, the proceedings of official bodies, and articles in periodicals, and to supplement this reading by extensive field observations of the institutions of municipal government in actual operation. To give the subject unity and coherence, and to furnish guidance for the students in organizing their information and in formulating their conclusions, it has been my custom to rely entirely upon lectures and class-room discussions.

Two years ago, however, my class in municipal government became so large that I was forced to modify this system of instruction. It was no longer possible to provide a sufficient number of copies of the various documents employed in reference work, and it was also impossible to organize and conduct field trips as effectively as formerly. Moreover, the size of the class seriously limited the extent and impaired the value of the class-room discussions. Consequently something in the nature of a textbook became imperative; and as there was not available at the time any book of the scope and character desired, I undertook to supply my students with certain

text material in mimeographed form. As this material accumulated it became evident that its usefulness would be greatly increased if it were printed, and I have therefore been glad to have it published as a textbook.

The book is not designed to serve as an exhaustive treatise or a compendious work of reference on the subject of municipal government. As the title indicates, it is essentially an outline, and it is intended to perform somewhat the same function with reference to the study of municipal government that a blue print does in architectural practice. The substance of the subject is presented as concisely and clearly as possible, and details are avoided except when they are essential to an understanding of the subject. It is my belief that a textbook should be used primarily as a chart to guide the student through the intricacies of the subject, and should attempt to summarize rather than to elaborate the fundamental questions and problems involved. Only when a course consists of a minimum of textbook and a maximum of teacher can it possess the interest and vitality that are indispensable to success in education. This textbook does not seek to usurp the function of the teacher, but on the contrary endeavors to magnify his importance and facilitate his work.

The teacher will assign a considerable amount of supplementary reading in connection with this book, the exact amount depending upon the scope and intensiveness of the course as he conceives and presents it. The bibliographies following the several chapters suggest the sort of reference material that may be effectively used with the book, but these reading lists are by no means exhaustive. In order to make accessible valuable documentary reading of the kind that is seldom available in college libraries, I have

prepared a book of readings which parallels this book in its chapter organization.

Although the book has been written as a textbook, it is to be hoped that it will also be of some use to that growing number of persons outside of academic groves, who have a deep interest in the problems of city government, but lack the time and hardihood to go through the somewhat more formidable books on that subject.

I am indebted to several persons for critical assistance in preparing the manuscript for publication. Dr. G. C. Robinson, Professor of Education in Western Reserve University, has given much valued advice as to the organization and presentation of the material from a pedagogical standpoint. Dr. C. E. Gehlke, Associate Professor of Sociology in Western Reserve University, has prevented a number of errors by his generous criticism of those portions of the book that deal with matters that come within the range of applied sociology. Mr. G. A. Gesell, formerly Director of Finance of the City of Cleveland and at present financial director of the Cleveland Board of Education, has been kind enough to read the chapters bearing on municipal finance and point out many ways in which they could be improved.

CHESTER C. MAXEY.

CLEVELAND, OHIO,
MARCH 1, 1924.

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MUNICIPAL GOVERNMENT

AN OUTLINE OF MUNICIPAL GOVERNMENT

CHAPTER I

THE CITY AS A PROBLEM IN GOVERNMENT

We live in an age of cities. This is at once the most striking and significant fact of modern life. Never before in human history have cities played such a dominant part in the social, economic, and political affairs of mankind. It is true of course that great and influential cities have flourished in every age since the dawn of civilization, but such cities have always been few in number and engulfed in an aggregate population of predominantly rural character. Within the past century, however, cities have so multiplied and the proportion of urban population has so increased that the bulk of the population in the most highly developed parts of the world to-day is concentrated in cities and an ever-diminishing minority remains in the rural districts.

The phenomenal growth of cities.—This unparalleled phenomenon is common to all countries and all sections of the world where modern methods of industrial organization and production have taken root. England was the first country in which the modern factory system developed, and the transformation of England from a rural

to an urban state began in the early part of the last century. Yet in 1881 the urban population of England was but 48 per cent. of the total; in 1921 the proportion of urban population had risen to 79.3 per cent. This means that in England to-day practically eight of every ten inhabitants are city dwellers. The metamorphosis of the United States has been equally remarkable. In 1800 the urban population of the United States was just 4 per cent. of the total population; by 1880 it had risen to 29.5 per cent.; in 1920 it was 51.9 per cent. And this concentration of population in cities is going forward at a rapid pace. Census estimates since 1920 show large increases in population for most of the cities and no corresponding increases in our rural population. Germany is another country which has been profoundly transformed by the shift of population from the rural districts to the cities. In 1880 Germany's urban population was only 28 per cent. of her aggregate population; in 1910, 60 per cent. of her whole population was urban. Even in France, where the movement of population to the cities has been more retarded than in any other western country, the proportion of urban population grew from 34 per cent. in 1881 to 44 per cent. in 1911. More recent statistics are not available for either Germany or France, but it is known that during the war there was a considerable migration of rural population to the cities in both countries.

This recitation of statistics might be continued indefinitely if that were necessary to convince the reader of the enormous and disproportionate increase of urban population that has been going on during the past century. This, however, is a fact beyond all controversy, and in this discussion we are primarily interested not in the fact, but in its causes and consequences.

The causes of urban growth.—It is now well understood that the principal cause of the phenomenal agglomeration of population in cities was the so-called Industrial Revolution the influence of which on city growth began to manifest itself in the early years of the Nineteenth Century and has continued without interruption to the present day. When power-driven machinery supplanted the handicraft system of industry, when the steamboat superseded the sailing vessel, when the locomotive and the railway displaced the stage-coach and the freight-wagon, then the rapid multiplication of cities and the migration of multitudes from the country to the city was made inevitable. Factories had to be located where there was waterpower or fuel and where there were facilities for transportation by water or rail. Workmen in large numbers were bound to seek employment in the factories and in the commerce and shipping connected therewith; and as factories multiplied in favorable locations, vast masses of people, dependent directly or indirectly upon them, migrated to the urban centers about them. Coincidently there were changes in land tenure and agricultural methods which diminished the demand for manual labor on the farms, and this naturally accelerated the movement of population to the industrial centers. Improvements in transportation and in municipal sanitation removed any conceivable limits to the size of cities, such as might have been occasioned by difficulties of provisioning the inhabitants or of maintaining life and health under congested conditions. Commerce and industry thus relieved of checks which might have been imposed upon them by the failure of society to cope with the physical difficulties of urban life, expanded almost indefinitely, and cities multiplied and grew in the same pro-

portion. And the end is not yet. Cities are increasing both in number and size, and unless the world shall fall into chaos through failure to find a solution for its international difficulties, there is little likelihood that the causes of urban growth will lose effectiveness in the near future.

The significance of the growth of cities.—Such are the bare facts condensed to a thumb-nail sketch. But what do they mean? What are the consequences of this astounding movement of population? An exhaustive answer to these questions would require many volumes, but we may attempt a short summary in a few sentences. In the first place it is obvious that millions and millions of people, whose ancestry for untold centuries has been rural, have been uprooted and transplanted to a new and unnatural environment. Probably no migratory movement of people over the entire span of history has been accompanied by such a sharp and complete break with former conditions and modes of life. In other words, social, economic, and political aspects of life which were the product of countless years of slow development and which had become relatively stable and settled, have been suddenly revolutionized, and nearly every institution of society has been rocked to its very foundation. And it is important to note that for the most part this has occurred during the fifty years just past—in the lifetime of the present generation. Naturally this sudden transformation of the character of our civilization has subjected all our institutions, social, economic, and political, to a seismic strain of incalculable magnitude. And the force of this upheaval has by no means spent itself. The concentration of population in cities is still going on at a rapid rate, and instead of being in the period of accommodation and adjustment, we are still in the period of transition and

travail. From a simple and certain past we are passing to a future that we know not and cannot forecast by any of the standards of the past. What agonies we must endure in learning how to live in cities—what drastic readjustments we must make in the traditional institutions and processes of society—may be faintly conjectured as we pass in review the social, economic, and political conditions that are indigenous to contemporary urban life.

The heterogeneity of city population.—Authorities have frequently pointed out that a given number of people living under urban conditions differ radically from an equal number of people living under rural conditions. The most obvious of these differences is the relative heterogeneity of the one and the relative homogeneity of the other. It is in the city rather than in the country that the diverse races and peoples of the world are cast into the melting pot. In the United States this condition is most striking, but in greater or less degree it is to be observed in all countries. The foreigner in all countries naturally gravitates to the cities, for it is the cities that offer opportunity and employment as well as association with people of his own kind. There is no great city that does not have a foreign quarter and does not exhibit a percentage of foreign population much higher than that in the rural districts. Statistics gleaned from the last census of the United States show that in 1920 the proportion of foreign-born white persons in our aggregate urban population was 19.1 per cent. And if there be added to that the proportion of native-born of foreign or mixed parentage and of colored races the wholly or partially unleavened element of urban population mounts to 54.8 per cent. of the total. In our rural population, on the contrary, the foreign-born white element is but 6.5

per cent. of the total, and the entire unassimilated mass, including most of the negro population of the southern states, is but 34 per cent. of the total. A selection of typical cities shows the condition even more strikingly. In New York the foreign-born whites constitute 35.4 per cent. of the population and the total population of other than native origin is 72.3 per cent. of the city's aggregate population. In Philadelphia the figures are 21.8 per cent. and 61.1 per cent.; in Chicago 29.8 per cent. and 76.2 per cent.; in Portland, Oregon, 18.2 per cent. and 47.3 per cent.; in Des Moines, Iowa, 8.9 per cent. and 33.2 per cent.; in Topeka, Kansas, 8 per cent. and 32.8 per cent. In one public school in the city of Cleveland there are children of thirty-one races, and every ninth child is a negro—a veritable ethnological laboratory.

Congestion of population.—Racial heterogeneity of this sort is commonly associated with a picture of ghettos and slums, and probably most people think of heterogeneity as the principal cause of slum conditions, forgetting the vast slums of cities like London, Glasgow, Paris, and Naples where one racial stock predominates. The plain fact is that crowding and congestion are characteristic of all modern cities. Great masses of people are forced to live under conditions which deny them adequate light and air and proper sanitation and privacy. The causes of these conditions are possibly sociological and economic, but the consequences claim the attention of all persons who are interested in the city as a political problem. For if there is to be any relief from these conditions, any solution of the problems they entail, it must come largely through political action.

Public health in the city.—Conditions of living in the

city, and particularly in the congested sections, are adverse to the maintenance of health and physical vigor. Consequently, in order to prevent excessive rates of mortality, the battle against disease and physical deterioration must go on incessantly; and eternal vigilance is the price of safety. Many things besides congested and unsanitary conditions of living conspire against the health and vitality of the city dweller. The want of appropriate recreational facilities, impure and improper food, unhealthful and hazardous occupational conditions—these and many other evils must be successfully combatted if the population of the city is to remain healthy and vigorous. This should not be taken to mean that public health cannot be as good in the city as in the country, but merely that there are in the city conditions against which continuous war must be waged if this end is to be attained. It is a matter of great encouragement that many cities have made such progress in controlling conditions inimical to public health that their death rates have declined as much as 20 to 30 per cent. in a quarter of a century.

Moral conditions in the city.—Of moral conditions in the city one cannot speak with assurance because they are not statistically measurable. Extreme opinions of all kinds are encountered, but generally they have very little substantiation in uncontested fact. It must be admitted that the city shows to a bad advantage when contrasted with the country in the matter of statistics of vice and crime; but this is far from proving that the city is inherently more a breeder of criminals and degenerates than the country. So long as the population of the cities is largely recruited from the country, and so long as statistics of rural criminality and degeneracy are either unavailable or defective, definitive conclusions on this point are im-

possible. It is clear, however, that public responsibility for moral conditions and the consequent necessity for corrective public action are greater in the city, because the home, the church, and other social institutions which make for morality, have less influence over the conduct of individuals in the city than in the country, and because also the opportunities for wrong-doing are so much more numerous in the city, and incidentally much more lucrative.

The economic structure of the city.—The economic phenomena of city life deserve careful study on the part of those who would fathom the realities of modern politics, for economic conditions admittedly have great influence in shaping political conduct. The first fact to claim attention is that the nature of property and the extent of its distribution are not the same in the city as in the country. The greater part of rural property takes the form of real estate, while personalty predominates in the city. Not only that, but the ownership of property among the inhabitants of the country, whether real or personal, is almost universal, while in the city the ownership of property, aside from personal effects, is confined to a very small part of the population. When we speak of the propertyless proletariat of the cities, we commonly have in mind the great mass of laboring people who own little besides their personal effects. But that is only part of the picture. The professional man and the small business man in the city must be reckoned among the propertyless mass almost as surely as the laborer; for the majority live in rented houses, work in rented quarters, and many even rent the furniture in their homes and the fixtures in their places of business. It is a well-known fact that real estate in the city is concentrated in the

hands of a relatively small number of wealthy individuals and corporations, and the same thing is coming to be true to corporate securities, which is the form of personal property that represents the major portion of urban wealth. Appreciating these facts one would not expect to find in the city the same degree of individual economic independence that exists in the country. The great majority of people in the city, instead of working for themselves, are employees, dependent upon the few who control property and wealth for the opportunity to earn a living. And this is true not alone of the laboring class, but of professional and business people, as lawyers, engineers, accountants, dentists, teachers, salesmen, and executives. But in addition to this, residents of the cities are in large part incapable, because of the high capitalization of land and the enormous costs of construction, of providing their own homes or business quarters; the majority are unable to provide facilities to enable them to get to and from their work; they cannot control the sources nor the quality of their food supply, nor the price of their fuel and light. They merely pay the bills as rendered. In a word, in the city economic independence does not exist, except as a fiction in the minds of people whom it does not please to admit that the interdependence of modern city dwellers has forever vitiated the old individualistic conception of governmental functions.

The reaction of the city upon the problem of government.—Before the Industrial Revolution and the consequent conversion of this and other countries into urbanized industrial states, it was a generally accepted principle that it was the function of government to act as a sort of big policeman to preserve to every one his personal and property rights, but not to restrain individual initiative

any more than might be necessary to maintain order and stability, nor to perform any services of a paternalistic character. Thomas Jefferson aptly expressed the idea when he coined the famous phrase, "That government is best which governs least." Many of our public men still pay verbal tribute to that theory of government, but none of them practice it. It is as obsolete as the dinosaur and the dodo. Under a rural economy it might have been justifiable, but under an urban economy it is intolerable. You do not argue theories when a house is on fire; you seize upon the quickest and most effective means at hand to extinguish the blaze. Likewise when emergencies arise in our social or economic life, we do not theorize; we get the government to act and do our theorizing retrospectively. So it has been with the *laissez faire* theory of government; one emergency after another, growing out of urban conditions, has resulted in the utter abandonment of that theory as a rule of action, although it has survived as a political doctrine.

We can afford space here only to suggest a few of the complexities and difficulties of government that may be clearly ascribed to the urbanization of this country. Manifestly, the city has brought into being a new crop of problems in the maintenance of public order and safety. The heterogeneity and congestion of the population, the newer and different kinds of property, the new industrial order, the corporate organization of business,—these and many other factors have worked together not only to multiply the ordinary difficulties of police administration, but to add many new crimes to the catalogue. Another governmental problem that has been immeasurably complicated by the urbanization of the country is finance. The expansion of governmental functions incident to the

growth and multiplication of cities has necessitated public expenditures on a vaster scale than ever before, while at the same time the older forms of taxation have become inapplicable owing to changes in the distribution of wealth and the evolution of new kinds of property and new sources of wealth. Another thing that might be noted is that the helpless economic position of the individual resulting from urban conditions, has compelled the government to assume the rôle of guardian in order to save the individual from ruthless exploitation. So we find government in this country to-day, municipal, state, and national wrestling with problems like unemployment, price regulation, marketing, food inspection, bank regulation, and transportation. And in many cases where private enterprise has failed or public regulation has been unsuccessful, government has entirely displaced private capital and has undertaken as a public function to supply fundamental necessities. In order to protect and promote public health and morality, the adverse conditions of urban life have obliged government to invade the realm of private conduct, to dictate to the individual what he shall do in the way of personal hygiene and what sanitary precautions he shall take, and to regulate and control his recreation and amusements. In short, it can be said without exaggeration that most of the major problems now demanding governmental solution are incident to or outgrowths of urban life.

The problem of governing the city.—Having seen the relation of the city to the general problem of government, let us now direct our attention briefly to the problem of governing the city itself, which is the principal subject of this book. Governing the city to-day is not at all the same kind of problem that it was in ancient and medieval

times, and there are very few lessons for us in the experience of cites prior to the middle of the last century. Ancient and medieval cities were for the most part free from external control and able to govern themselves as they pleased; but the city to-day is everywhere merely a subordinate unit of some great national state, like Great Britain, France, or the United States, and it derives not only its powers and authority, but its very existence as a legal entity from a superior central government. One of the great and difficult problems in the government of the modern city is, therefore, the relation of the city to the central government, and here in the United States that relationship is probably more complex than in any other country. In American cities there is another problem that looms very large, one that has been relatively unimportant in the government of European cities, and that is the form of structure of the city government. Changes in the governmental organization of European cities have been few and for the most part of very gradual development, while in this country we are constantly reconstructing the form of city government in a most drastic way. Likewise the operations and processes of municipal politics give rise to many grave and important problems. But these after all touch the individual citizen indirectly and remotely. What interests him more immediately is the police system, the fire department, the water-supply system, the paving of streets, the control of utility services, and a score of other services which it is the business of city government to render. And above all else, perhaps, the individual citizen is interested in the city's income and expenditures, for this phase of city government comes directly home to him in the form of taxation. In municipal finance, in the administration of

municipal functions, and in the legal and structural phases of city government there are numerous problems of such magnitude and complexity as to test the soundness and sufficiency of democratic institutions to the uttermost.

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CHAPTER II

THE RELATION OF THE CITY TO THE STATE

"WHENEVER I want to do anything, I find a wagon-load of laws blocking the way." This remark was made by Mr. George L. Oles, whose eccentric career as mayor of Youngstown, Ohio, brought him temporarily into national prominence. Youngstown being one of the few Ohio cities to fail to take advantage of the municipal home rule amendment of 1912, the legal strictures of which Mayor Oles complained are somewhat more numerous and stringent than in other cities of the same state; but they are in no way untypical of conditions in the thirty-three states which have no constitutional provision for municipal home rule.

The legal predicament of the city in the United States.—The average American city is veritably enmeshed in a network of laws so elaborate and intricate that the definition of its legal position, powers, and liabilities is baffling even to the expert. Every city in the country is what the law terms a municipal corporation—that is, a corporation created by law to exercise subordinate governmental powers and administer the public affairs of the inhabitants of a given community. Here we have a clue to the legal predicament of the American city. Being a corporation, it is a mere creature of the law; being a subordinate agency of government, it is subject to the control and regulation

of a superior governmental authority, which control and regulation are exercised in this country through the instrumentality of detailed legislation; and being an agency for local administration, it must be endowed with legal powers and attributes adequate to that end. This means an incongrous profusion of laws granting powers, imposing restrictions, fixing liabilities, specifying procedures—it means, in fact, that the city in most of our states is entrapped in a morass of legislation, into which it is ever sinking deeper and deeper.

The problem of central control of cities.—But despite the unhappy legal plight of the city in the United States, no one has ever seriously proposed that our cities should absolutely be released from the control of a superior governmental authority. The city, under our federal scheme of government is a subordinate unit in the governmental structure of each of the component states of the Union, and no state, therefore, could allow cities within its borders a degree of independence that would be subversive of the supremacy of the state. Moreover, the city is very largely employed by the state as an administrative agency for the discharge of state functions, and, as such, must needs be subject to state control. It is sometimes said, also, that the state should exercise a large degree of control over cities in order to produce a desirable degree of uniformity in the institutions of local government throughout the state. It would be superfluous to continue piling up reasons to justify state control of cities; for the real problem is not whether there should be such control, but how it should be exercised.

Central control of cities in European countries.—Before dealing in detail with the problem in the United States it will be instructive to observe how central control of

cities has been accomplished in other leading countries. It should be noted at the outset that there are two general methods of central control: (1) the administrative method, whereby administrative agents of the central government are empowered to regulate municipal government by vetoing the acts of local authorities, suspending or removing local officials, demanding reports from local officials, and similar acts; and (2) the legislative method, whereby an elaborate and detailed code of law regulating minutely every phase of municipal government is enacted by the central legislature and enforced through the courts. The former method is the one in vogue in most European countries. In France, it is true, there is a general body of law applying to municipal corporations (communes), but it seldom embraces any of the microscopic matters that are common to American municipal codes. It deals rather broadly with matters of general importance and leaves the details to be supplied from time to time by administrative decree or regulation. The administrative machinery for controlling the communes centers at Paris in the national department of interior; in each of the administrative *departments* into which France is divided there is an officer known as the prefect, a subordinate of the minister of interior and directly responsible for superintending and regulating the affairs of the communes. The powers of the communal council may be divided into three classes: (1) those where the initiative rests with the prefect or other central officer, but concerning which the communal authorities must be consulted before action is taken; (2) those where the communal authorities have the initiative but must act subject to the approval of the central authorities; and (3) those which the communal authorities may exercise independently. The administrative head

of the commune is the mayor, elected by the communal council. Though the mayor has extensive administrative authority, it must be exercised under the close supervision of the prefect; regulations and ordinances issued by the mayor may be vetoed by the prefect; and the mayor may be suspended for one month by the prefect, for three months by the minister of interior, and removed entirely by presidential decree. Similar administrative control of cities is characteristic of Germany, except that it is exercised not by the federal government at Berlin but by the various state governments. Of course in many details of operation the German system differs from the French, but it is identical in its basic principles.

The English system of central control is, perhaps, more instructive for Americans than any other. Theoretically, England has the legislative system of control, but like many other theoretical aspects of English government this one does not operate in practice. Finding statutory control impractical, Parliament has supplemented it by confiding to several of the departments of the central government extensive authority in the regulation of municipal affairs. The most important perhaps is the Ministry of Health, formerly the Local Government Board, which has power to issue binding orders to local authorities on many subjects, to veto certain acts of municipal councils on the ground of illegality, to regulate the borrowing of money by municipal authorities, and to audit the accounts of local authorities. The Board of Trade has large powers to supervise cities undertaking to own and operate public utilities. The Home Office directs the metropolitan police force in London and has the right to inspect the police in all cities to ascertain whether standards have been maintained as prescribed for

the receipt of subventions from the central government. To sum up, central control in Europe is accomplished with a minimum of legislation and a highly centralized scheme of administrative regulation; while in the United States, as will be more fully explained later, central control is effected by a maximum of legislation applied to a completely decentralized administrative system.

Legislative control of cities in the United States.—The story of city government in the United States really begins with the American Revolution. It is the custom of scholars to dwell at some length upon the borough of colonial times and its relation to the colonial government; but as all that was upset by the Revolution, it is only of passing interest to speculate what might have been the course of municipal development in this country had not the passionate distrust of executive authority, engendered by the conflict with the mother country, led to the transfer of the function of chartering municipal corporations and regulating municipal affairs from the governor to the state legislature. The state legislatures at first were little disposed to use this newly acquired power to break down municipal autonomy or to meddle with the purely internal concerns of cities. Indeed, there are judical opinions on record in which it was stated as a commonly accepted rule that the legislature was not to use this power to intervene in purely local affairs unless so requested by cities themselves. Gradually, however, the political possibilities of legislative domination of municipal corporations came to outweigh considerations of sound public policy, and state legislatures conveniently found occasion for abandoning their early restraint in issuing municipal charters and regulating municipal affairs. The courts had laid down the rule that a charter given to a city by a state legislature was not an

inviolable grant, but merely a statue which could be repealed and modified like any other act of the legislature; and to this was added the logical corollary that the city was a mere creature of the state legislature; and that since its charter could be amended or abolished at the will of the state legislature, it did not stand in a position to claim constitutional protection against the state legislature, unless there were in the constitution of the state specific limitations on the power of the legislature.

The entire subsequent history of municipal government in this country has focused about the movement to curb and curtail this unconditional and arbitrary power of the state legislature, which has been used unintelligently, corruptly, and in such a way as to promote every sort of political chicanery and pettifoggery. As the system now stands in the United States, central control of cities is exercised entirely through the state legislature, which, in the absence of constitutional restrictions, may deal with cities entirely as it pleases. The control of the legislature is applied through the granting of charters to cities individually by special act of the legislature, by the enactment of general laws providing for the incorporation and government of cities, and by the enactment of multitudinous and multifarious laws, general and special, regulating minutely every conceivable step that a municipal corporation can take. Strict observance of each and all of the microcosmic details of this confused statutory conglomerate is necessary to the validity of the operations of municipal government. The business of enforcement devolves upon the courts, which, however, may act only in the event of the initiation of a lawsuit by a properly qualified private citizen or by a prosecuting attorney.

Administrative vs. legislative control.—However haz-

ardous it may be to generalize regarding governmental processes as complex as central control of cities, practically all competent observers agree that experience has demonstrated the superiority of administrative control in at least three respects. It is admitted, in the first place, that administrative control makes possible a degree of flexibility in the regulation of municipal affairs that is unattainable under the legislative system. Legislative control is predicated upon an elaborate and detailed municipal code, which is either absolutely uniform in its application or highly particularized, but in either case is so inelastic that it can only be adapted to changing requirements and conditions by the cumbersome process of statutory revision. Under the administrative system of control, on the contrary, the terms of the municipal code are usually so general in character that ample latitude remains for the central administrative authorities to apply the law to each city in accordance with its own peculiar needs and circumstances. It is in this regard, perhaps, that we find the most notable contrast between European and American methods of municipal regulation. Instead of being imprisoned in a legal straight-jacket which allows it virtually no freedom of action, the European city is subjected to a process of administrative supervision, which though exacting, is nevertheless sufficiently pliant to admit of adjustment to the requirements of any individual city or problem.

The second point of superiority for administrative control is that it commits the regulation of municipal affairs to officials who by reason of training and experience are thoroughly conversant with municipal conditions and problems, and are therefore in a position to use the large discretion they possess with a degree of intelligence that

no legislature can be expected to equal. A legislative body, by reason of its structure and procedure, can have but little direct contact with the day-to-day operations of municipal government, and, furthermore, is quite likely to be composed of politicians whose paramount interests lie in other directions.

The third point of superiority conceded to the administrative system is that it secures systematic and continuous supervision of municipal affairs; whereas under the legislative method control is at best uncertain, sporadic, and discontinuous. An administrative officer is "on the job" every day, exerting constant influence and pressure upon municipal authorities; while a legislature meets at infrequent intervals; and even when it enacts a law covering a given subject, that law must be enforced by a process of litigation, which is not only dilatory, tortuous and uncertain of outcome, but which can be initiated only upon the contingency of a suit brought by a locally elected prosecuting attorney or a private citizen. The consequence of this anomalous condition is that American municipal codes are often far more honored in the breach than in the observance.

The curtailment of legislative supremacy in the United States.—The supreme power of state legislatures over municipal corporations has been so grossly abused and the failures of legislative control have been so abundant that there has been a persistent endeavor in practically every state of the Union to trim down the power of the legislature in respect to cities; and in a few states there have been inchoate experiments with administrative control, as for example, state inspection and regulation of municipal accounts in such states as Massachusetts, New York and Ohio. In hewing down and limiting the

power of the legislature to deal with cities there have been two principal modes of attack: (1) through the courts, by such interpretation of state and national constitutions as will accord certain protections to cities against arbitrary legislative action; and (2) through specific amendments inserted in state constitutions for the primary purpose of protecting cities against the state legislature.

Curtailment by judicial decisions.—The impairment of legislative freedom in dealing with cities through judicial construction of the state and national constitutions is by no means as extensive as is sometimes supposed. A fallacy that is by no means uncommon is the assumption that the courts have established a rule that, even without specific grant, cities possess certain inherent and inalienable rights of local self-government which the state legislature is bound to respect. Professor McBain has shown that this doctrine is legally unsound, historically inaccurate, and that it has been sustained by the courts in only three states; yet the heresy somehow persists, possibly because the wish is father to the belief. Another misconception that is somewhat prevalent is that the courts have construed the Constitution of the United States so as to afford cities extensive protection from arbitrary action of state legislatures. The fact is that the courts have been exceedingly chary in interpreting the national constitution in any way adverse to the authority of state legislatures over municipal corporations. There are only three express provisions of the national constitution that have ever been invoked by cities to thwart legislative authority; (1) the clause forbidding any state to pass any law impairing the obligation of contracts; (2) the clause forbidding any state to deprive any person of life, liberty and property without due process of law; and (3) the clause

forbidding any state to deny to any person within its jurisdiction the equal protection of the laws.

As to the first of these, it may be said that the Supreme Court of the United States has never declared an act of a state legislature void on the ground that it impaired the obligation of a contract alleged to have been entered into by a state with one of its cities; and it has repeatedly held that a municipal charter is not a contract between the city and the state. There have been, however, a few cases in state courts in which the contract clause of the Constitution of the United States has been successfully invoked to invalidate legislation interfering with cities; but no state court has ever held a municipal charter to be an inviolable contract between the state and the city.

The protections that have been accorded to cities under the due process clause of the national constitution are very attenuated. The cases are too numerous and confused for analysis in a summary of this sort, but suffice it to say that the courts have always shown a disposition to regard the property and contractual rights of cities as being fundamentally different from those of private persons. A distinction is made between property which the city holds in its public and governmental capacity and in its private and proprietary capacity, the latter being entitled to a greater degree of constitutional protection than the former; and about the only clear and unquestioned limitation on the legislature under the due process clause is that it may not alienate the property of a city and transfer it to a private person.

Under the equal protection clause of the national constitution, as far as the cases show, the city has no immunity whatsoever from legislative authority. There remains one other source of judicial protection based on

the national constitution, and that is found in the doctrine which has been evolved by the courts, without reference to any specific clause, that the Constitution prohibits taxation for a private purpose. This rule has often been held to act as a limitation on state legislatures in respect to municipal corporations. Provisions of state constitutions, except those expressly and specifically imposing limitations on the legislature with regard to cities, have been even less liberally applied than those of the Constitution of the United States. Hence it would appear that judicial interpretation has in reality accomplished very little in the way of freeing the city from legislative domination.

Curtailment by specific constitutional limitations.—The continuous and wanton abuse of legislative authority over cities, and the failure of the courts to establish any adequate immunities for cities, have led in most states to the insertion in the state constitution of various provisions designed to act as checks upon the legislature. One of the most abused powers of the legislature has been the power to deal separately with any individual city by special act. By special act of the legislature the charter of the city could be granted, revoked or modified; and by special act of the legislature any sort of intervention in the affairs of any city could be accomplished. Legislatures swayed largely by partizanship and predatory motives quickly fell into the practice of using this power solely for political advantage. Charters were given and taken away; positions were created and abolished; salaries were increased or diminished; local improvements were ordered; levies of taxes were ordered; appropriations for various purposes were commanded—all at the behest of the state legislature and without consulting the needs or desires of the inhabi-

tants of the city concerned. To prevent this sort of thing constitutions of many of the states have been amended by the addition of provisions forbidding the granting of municipal charters by special act of the legislature, and in a number of instances going so far as to forbid all special legislation respecting municipal corporations. Such provisions, on the whole, have greatly abridged the power of the legislature, although in some states it has been possible to evade them by a highly refined classification of cities, the courts holding that legislation for all the cities of a given class is not special legislation.

Another type of constitutional provision restricting the absolute power of state legislatures is the clause guaranteeing to cities the right to choose their own officers. While it may be contended that in the beginning such provisions were not designed primarily as barriers against the state legislature, they have so operated and that is the reason they have multiplied. A third type of constitutional restriction that is found in many states is that which forbids the legislature to delegate to any special commission, private corporation or association, any power to make, supervise, or interfere with any municipal improvement, property, or money, or to levy taxes to perform any municipal function. This is accounted for by the notorious abuses connected with the creation by the state legislature of special commissions to construct municipal buildings and public works, or to discharge some municipal function such as the administration of the police department. Another form of constitutional restriction, the purpose of which is obvious, removes from the control of the legislature the granting of street railway franchises, and forbids legislative interference with the streets or street franchises of municipal corporations. There are also

numerous and varied restrictions upon the legislature in the constitutions of many states designed to limit the legislature in imposing financial obligations upon municipal corporations and to compel it to make provision for the financial solvency of cities.

Though the foregoing statements do not constitute an exhaustive survey of the specific restrictions which state constitutions impose on legislatures with regard to cities, they illustrate very well the effort that has been made to circumscribe the legislature by such devices. Helpful as strictures of this nature have been in protecting cities against mistreatment at the hands of the legislature, they have been far from perfect in solving the problem of the relation of the city to the state. In the first place, they are seldom sufficiently comprehensive to provide the complete protection needed by cities; in the second place they are negative in character, and do not provide cities with the positive autonomy required for self-goverment; in the third place, they tend to inject such rigidity and uniformity into the law governing municipal corporations that differentiation between localities is rendered difficult, if not impossible.

The movement for municipal home rule.—The movement for municipal home rule began with the adoption in the state of Missouri in 1875 of an amendment to the state constitution providing that any city having a population of more than 100,000 might frame a charter for its own government, such charters to be consistent with and subject to the constitution and laws of the state. While the genesis of this now famous amendment is obscure, it appears to have sprung from political machinations incident to the perennial struggle between the political forces dominant in the city of St. Louis and those controlling the

state government; and credit for the conception of the idea of home rule as a status that would emancipate the city from the overlordship of the state legislature is ascribed to the influence of leading German-American citizens of St. Louis, who are supposed to have had in mind the celebrated free cities of Germany—Hamburg, Bremen and Lübeck. The idea was an attractive one, and soon spread to other states. California incorporated a similar amendment in her constitution in 1879, and the state of Washington was admitted to the Union in 1889 with the home rule provision in its constitution. Minnesota was the next state to take up the idea, adopting a home rule amendment in 1896. Thereafter the movement made more rapid progress, the following being the adoptions by states with the year of adoption: Colorado (1902), Oregon (1906), Oklahoma (1907), Michigan (1908), Arizona (1912), Nebraska (1912), Ohio (1912), Texas (1912), Maryland (1915), Pennsylvania (1922) and New York (1923). In several other states amendments are to be submitted or are in process of being considered. In addition to these constitutional amendments providing home rule for cities, the legislatures of a number of the states have been induced to enact statutes according to cities large freedom to adopt and modify their own charters; but since these can always be overridden or altered by any subsequent legislature, they do not accord cities the indefeasible immunity from legislative domination contemplated by the constitutional home rule amendments.

The problem of municipal home rule.—To comprehend the difficulties attending the introduction and application of constitutional home rule it is necessary to view it as something more than merely an additional shackle upon the state legislature. It is in reality an attempt to place

the relation of the city and the state upon a basis entirely without precedent in this or any other country. Remember that the supremacy of the state legislature has not been greatly compromised by judicial construction and that specific limitations upon the legislature as to one subject or another have had the weakness of being easily circumvented and of merely hampering and embarrassing the legislature without giving the city much real freedom and autonomy. Constitutional home rule proposes to correct this by doing for the city and the state what the Federal Constitution has done for the state and the nation—to divide the powers of government between them so that there will be a domain of authority which will belong to the city as of right, derived from the constitution of the state and not from legislative grant. In other words, constitutional home rule may in a sense be regarded as an extension to the states of the federal principle; and, as under the Constitution of the United States, distinct spheres are allocated to the states and to the nation, so under the state constitution separate areas of authority are assigned to the city and the state. The fundamental idea undoubtedly was and is that the city should enjoy exclusive jurisdiction over a sphere whose boundaries are marked not by restrictive barriers erected against the legislature, but which shall be determined by the extent of the purely local functions of city government. The great difficulty, however, as in all cases of federal distribution of power, has been to establish the line of demarcation between the city and the state in such a way as to remove all possible doubt or dispute as to the respective spheres of each. Herein the framers of most of our home rule amendments have signally failed; perhaps it was too much to expect them to succeed with no landmarks to guide them and none too

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PRESENT ORGANIZATI

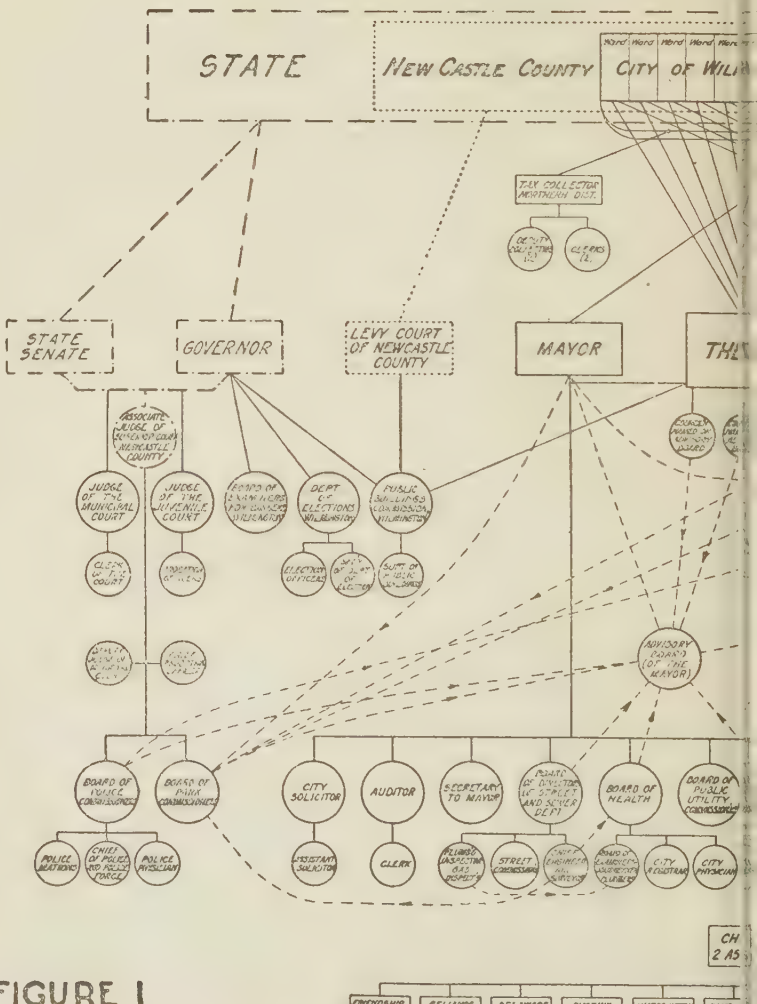
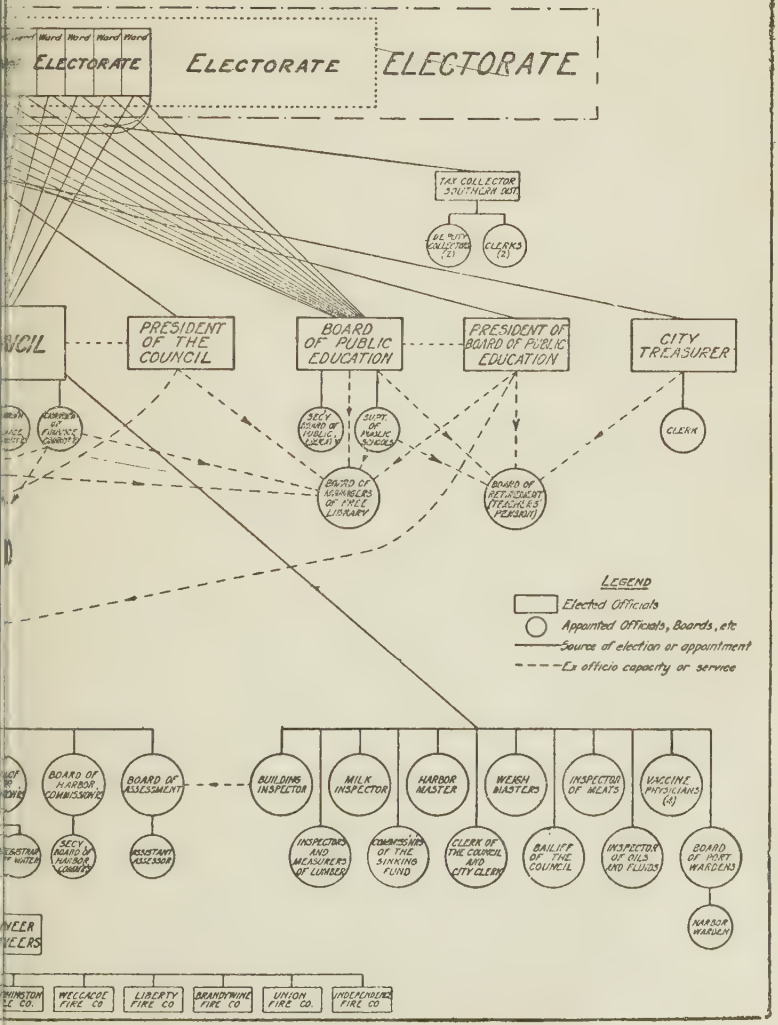


FIGURE 1

OWING

CITY OF WILMINGTON



clear a conception of just what they desired to accomplish. At any rate the supreme problem in the history of home rule has been to determine just what powers have been conferred upon the city by the grant of home rule, and how to adjust the conflict over disputed powers.

The application of home rule.—The difficulties incident to the application of constitutional home rule in the states which have adopted it have thrown upon the courts the responsibility for defining and marking the precise boundaries between the domain of municipal home rule and that of state authority. With no precedents to guide them and with language of very ambiguous character to construe, the courts of the several home rule states have found themselves cast into the sea to reach land as best they may. It is not surprising, therefore, that out of the babel of confused and contradictory judicial opinions that have been handed down on the subject of home rule, few sound and consistent principles are to be discerned. The first big problem of the courts in virtually every home rule state has been to determine from the exceedingly dubious language of the home rule amendment the scope of the home rule powers of the city. Obviously it could not have been the intention of the home rule amendment, even though framed in the broadest of language, to endow the city with authority to exercise within its own boundaries the complete power of a state. What must have been intended was that the city should have in its own right, without the necessity of looking to the state legislature, all of the power pertaining strictly to local self-government, and nothing else. The Missouri amendment, which for many years served as a model, expressly stated that home rule charters were to be "consistent with and subject to the Constitution and laws of this State," and similar or even

more explicit qualifications have been attached in most of the states. Manifestly such a qualifying clause could be so strictly construed as practically to nullify home rule, as happened in the state of Washington; or it could be construed with sufficient liberality to preserve to the city all of the essential powers of self-government in so far as the exercise of such powers does not encroach upon the proper sphere of the state. As a matter of fact, however, neither of these courses has been consistently pursued, but rather one of vacillation, uncertainty, and absurd inconsistency. Indeed, it has been asserted, and not without foundation, that in many instances the course of the courts has been determined not by reason and sound policy, but by political expediency. So we find the courts of one state declaring that the power to regulate the rates of public utility corporations is not one of the powers of the city under home rule, while the courts of a sister state declare with equal confidence that it is; or we have the more striking case of the courts of one state taking the position that home rule does not confer upon the city the power to own and operate a theatre, while those of another state are quite positive that it does. Owing to such incongruities and uncertainties of interpretation states which have adopted home rule more recently have attempted to set out as explicitly as possible the powers and rights which are to be reserved to the city under home rule, the Ohio amendment of 1912 and the supplementary amendment adopted in Colorado in the same year being the best examples. A model home rule provision has been formulated by the National Municipal League, and this also enumerates specifically the major powers of self-government which it is desirable to bestow upon the city.

The other leading problem that has vexed the courts in

construing home rule amendments is in a sense a corollary of the one just considered. Regardless of whether the appropriate area of municipal home rule is clearly defined, there will invariably be cases where the state and the city will come into conflict; when both will try to occupy the same field. It is for the courts to determine whether, in any instance, irreconcilable conflict exists, and whether the city will yield to the state or the state to the city. Here again the courts have floundered about without arriving at consistent guiding principles, although there seems to be a disposition to accord priority to the city in matters that the courts regard as purely local, even though there may be a pre-existing and conflicting state law covering the same ground. In Ohio, for example, there has long been a controversy as to whether charter provisions or pre-existing state law will govern in case of municipal elections, and the answer in that state has been in favor of the city; in other states, however, elections are not viewed in the same way.

The results of home rule.—There is a prevalent attitude of skepticism about the results of home rule that seems not to be justified by the facts. One recent writer has gone so far as to say that real home rule exists only in Oregon and California. It is true that not all of the expectations of the ardent champions of home rule have been realized in practice. Possibly no reform ever has measured up to the advance notices of its propagandists. But this, in itself, is not sufficient ground for pronouncing home rule a failure. It is also true that the courts in some of the home rule states have whittled down the home rule powers of cities until they are so attenuated as to be almost negligible; and it is likewise true that the courts in other home rule states have so beclouded the problem of

municipal powers with incongruous and irreconcilable decisions as to leave serious doubt as to the extent and reality of municipal home rule. But these matters are primarily legalistic. One who wishes to make a fair appraisal of the results of home rule should compare conditions in some of the leading home rule states (say Ohio, California, Michigan, or Texas) before and since the introduction of home rule. Regardless of the judicial interpretation of home rule, it will be found that cities are actually enjoying a far larger degree of independence and autonomy than ever before. Whether the courts take a liberal or an illiberal attitude in construing the home rule powers of cities it is a fact that they are obliged to take an attitude much more favorable to municipal independence than they asumed under the régime of legislative absolutism; they must approach the question of the status of the city from a wholly different standpoint. No longer is it possible to deny powers to the city simply because they cannot be traced to any legislative grant; on the contrary, it is generally necessary to establish some irreconcilable conflict between powers claimed by the city and those belonging appropriately to the state. It is not only the judicial attitude, but the legislative attitude as well that has been profoundly altered by the adoption of home rule. The legislature under home rule must be far more circumspect than ever before in the enactment of laws pertaining to cities, because it can no longer proceed upon the assumption that its power extends to everything not explicitly forbidden to it.

Perhaps the best evidence of the improved situation of the city under home rule is to be found in the greater variety of form and the greater flexibility of operation that have generally characterized municipal government subse-

quent to the adoption of home rule. It is not wholly without significance that the states in which the most novel and interesting departures in municipal government are being made are almost without exception home rule states. Ohio is one of the best examples. It cannot be said that home rule in Ohio has been an unqualified success, and yet under home rule Ohio has in less than a decade advanced from the position of being one of the most backward states of the Union in municipal affairs to a position of undoubted leadership among the progressive states. Indeed it is an undeniable fact that without home rule the revolutionary charter amendment adopted by Cleveland in 1921, and which is regarded by many as the most important step in American municipal history, would have been utterly impossible. Every one familiar with municipal affairs knows that many similar examples can be found in the history of other home rule states. Another fact of importance in evaluating the home rule movement is that the most significant developments in the direction of municipal ownership have occurred in home rule cities. This is natural because in such cities the city is usually much freer to choose its own policy than it is under legislative domination. Still another consideration which perhaps can only be appreciated by one who has lived in large cities both in home rule states and in states not having home rule is the more alert and sustained civic consciousness generally found in the former. It is not an accident that municipal research bureaus, civic leagues, and other civic organizations are more consistently prosperous and successful in home rule cities than in cities under legislative domination. Finally, let us remember that home rule is after all a great experiment in democracy; and that only after years of experience with more perfect

forms of home rule than we now have can such an experiment be pronounced either a complete success or a complete failure.

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CHAPTER III

THE STRUCTURE OF CITY GOVERNMENT

"It is not the form of government that counts, but the men that administer it; put good and able men into office and you can have good government under any system." This time-honored platitude was worn threadbare in Cleveland during the campaign on the adoption of the manager plan of city government in the fall of 1921. On the other extreme was the argument, equally dogmatic and equally platitudinous, that things were incurably bad and would so remain under the old form of government, and that the only hope of improvement lay in revolutionizing the structure of the city government. These categorical extremes of opinion are as old as the history of political reform, and have been invoked everywhere when a change in the structure of government has been proposed.

Is the form of city government important?—From the scientific point of view both opinions given above are wrong. To say that the organization of city government is unimportant so long as the personnel is good is simply to overlook the plain teachings of experience and to exhibit complete ignorance of well established principles of scientific management. And, on the other hand, to contend that good government can be brought about simply by perfection of organization is as fatuous as to assert that a per-

fectly constructed automobile will run perfectly no matter who drives it. Some schemes of city government are so absolutely defective in organization that statesmen of unquestionable skill and integrity could not get good results with them, and none are so perfect that they cannot be constantly improved. But no scheme of city government will ever be perfect enough to neutralize the errors of human judgment or the perversities of human character. The scientific conclusion should be that the form of government is important, but not all-important; and that in every case the question should be whether a proposed structural reform is based upon sound principles, and will not only facilitate the operation of government in the hands of good officials but will also give greater assurance of getting good officials.

The evolution of municipal organization in the United States.—American municipalities began with a simple and unified system of government, patterned after the English borough. There was a single governing body—the council—composed of the mayor, the recorder, the aldermen, and the councilmen all sitting together. The mayor was the presiding officer of the council and an integral part of it. He was appointed by the governor or was chosen by the council itself. He could vote as a member of the council, but had no power to veto its acts. Sometimes he was empowered by the council to make appointments and perform certain executive duties, but these were never extensive or important. As titular head of the government of the city, the mayor naturally occupied a position of much distinction and influence; but he was in no sense head of an independent and coördinate branch of government. The recorder was the legal adviser of the corporation, and like the mayor was integrated with the council.

As between aldermen and councilmen there was no profound difference. Aldermen had certain judicial functions in addition to their councilmanic duties, and generally were selected in a different way from the councilmen. The mayor and recorder, as well as the alderman, had special judicial duties, and in some instances all these functionaries sat together as a court of general sessions.

This system persisted long after the American Revolution, and did not completely disappear until about the middle of the nineteenth century. Very early, however, portents of the principle of separation of powers began to appear. The first was the Baltimore Charter of 1797, which made provision for an independent mayor and a bicameral council. Similar innovations soon appeared in other cities; but it is a matter of controversy among scholars whether these at first were the result of deliberate application of the doctrine of separation of powers and checks and balances to municipal government or were the outcome of entirely different factors. It is not really a matter of great practical importance, for it is unquestionably a fact that by the middle of the century the idea of separation of powers and checks and balances had come to be universally accepted as a fundamental principle in municipal government.

It is difficult to describe the effect of this principle upon the structure of American city government. It led to almost complete disintegration of organization and dispersion of authority. The mayor was taken out of the council and made elective by popular vote. He was also in most instances given a limited power to veto acts of the council. Occasionally, too, he was given certain powers of appointment and removal as well as other administrative powers. Detached or semi-detached of-

fices, boards, and commissions were created in great profusion, very largely curtailing the powers and functions of the council without correspondingly increasing those of the mayor. The chaos and diffusion of responsibility incident to this invertebrate scheme of municipal government furnished a perfect ambush for the spoilsman, the grafter, the boodler, and the corrupt political boss; and this fact together with the extraordinary incentives to predatory political activity caused by the tremendous growth of cities and their insatiable demand for utilities and local improvements, led to an era of venality, corruption, and political profligacy almost without parallel in the annals of democratic government.

Eventually there came a reaction against this shameful state of affairs and a widespread demand for municipal reform. But despite all the muckraking and agitation it was many years before substantial changes in the structure of city government could be accomplished. The first radical departure from the era of decentralization was in the direction of concentrating power and responsibility in the mayor, and it came in a curious way. In 1870 W. M. Tweed, head of the Tammany organization in New York City, brought about the adoption in that city of a new charter which empowered the mayor to appoint the heads of ten administrative departments without the requirement of confirmation by the board of aldermen. It is not to be supposed that this innovation was instituted by Tweed for purposes of reform, and it certainly did not have that effect. In fact the wholesale corruption incident to the Tweed régime was largely responsible for its abandonment three years later. But it contained one principle that was sound, namely, the unification of the city's administrative service and the center-

ing of administrative authority and responsibility in one person—the mayor. In 1880 in the charter of the city of Brooklyn, this principle was given a second trial, and with such success that it was soon readopted in New York. Following this it spread rapidly to other cities, and with various modifications and variations came to be the accepted type of municipal government in most of the larger cities, such as New York, Philadelphia, Boston, Detroit, Cleveland, and St. Louis. This of course was in a sense not a fundamental change at all. There was no departure from the idea of separation of powers, and no thought of eliminating checks and balances except as between executive departments and agencies. But the integration and exaltation of the executive was a marked improvement over the jumbled administrative hodge-podge which preceded it.

The commission plan.—It was with the advent of the commission plan in 1901 that American cities entered upon a course of governmental development characterized by principles wholly at variance with the venerable doctrine of separation of powers and checks and balances. The city of Galveston, Texas, in the autumn of 1900 was devastated by a terrible hurricane and tidal wave. The city government, which was of the traditional mayor-council-board type, was found to be entirely unequal to the emergencies thus suddenly thrust upon it. To meet the exigencies of the situation a group of leading business men of the city proposed to the state legislature a scheme for temporarily abolishing the existing city government and turning over to a commission of five men complete power to govern the city and administer its affairs. The legislature acceded to this request, and the plan was put into operation in the spring of 1901. It

provided for a commission of five men to act as a city council and executive board, and to act individually each as head of an administrative department. Originally it was provided that three of the commissioners should be appointed by the governor of the state and that two should be elected by the voters of Galveston; but a decision of the state supreme court soon made it necessary to have them all locally elected. Though intended only as a temporary expedient, commission government proved such a boon that Galveston was unwilling to give it up. And other Texas cities, seeing what commission government had done for Galveston, sought and received from the legislature permission to operate under similar charters. Soon the plan began to attract attention throughout the entire country. One of the first cities outside of Texas to take up the commission plan was Des Moines, Iowa, which in 1907 adopted a charter embodying the commission plan together with non-partizan elections and the initiative, referendum, and recall. Thenceforward the commission plan spread over the country with astonishing rapidity, reaching the crest of its popularity in 1914 when more than four hundred cities were enrolled in the list of commission governed municipalities. Since that highwater mark, the commission government wave has receded, and the manager plan of city government—an offshoot of the commission plan—is now sweeping the country just as the commission plan did a decade ago.

The manager plan.—In 1908 the little city of Staunton, Virginia, was seeking a way out of the difficulties with which it was beset in the transaction of its public business. A committee of the city council was appointed to investigate the possibilities of reform, and reported in favor of the adoption of the commission plan. It was impossible

to follow this recommendation, however, because the Virginia constitution at the time required cities to have an independent mayor and a bicameral council. Determined to obtain relief of some sort, the council then passed an ordinance creating the office of city business manager, and providing that the various administrative departments and agencies of the city should come under the direction and control of this office, which in turn was under the control of the city council. This innovation attracted much attention and excited a great deal of comment, but was not followed elsewhere.

In 1910 Mr. Richard S. Childs endeavored to have the New York Short Ballot Organization sponsor a bill in the New York legislature to provide several different plans of city government and allow a city to elect any one of these optional plans by a local referendum. One of the plans included in the bill was what Mr. Childs termed an "improved commission plan." It provided for the government of the city by a small body of commissioners elected at large and on a non-partizan basis, but required the commission to exercise its administrative functions through a city manager to be appointed by it and to hold office at its pleasure. The proposed optional charter bill was not taken up by the New York Short Ballot Organization, and Mr. Childs then sought other means of getting the idea launched. Learning that the Board of Trade of the city of Lockport, New York was planning to ask the legislature for a commission government charter, Mr. Childs wrote them saying he had a bill already drafted embodying the latest ideas on commission government and inviting them to have it introduced as their own. This they did in 1911. The bill did not pass, but it was extensively discussed and advertised.

The first city to adopt a commission-manager charter was Sumter, South Carolina, in April 1913. Credit for suggesting the commission-manager plan directly to the leaders of the charter movement in Sumter is generally given to Mr. Charles E. Ashburner, the first city manager of Staunton, Virginia. A number of small cities quickly fell in line with Sumter, and then in August, 1913 came the event which put the manager plan into the headlines and furnished the impetus for its rapid extension—the adoption of the commission-manager system in Dayton, Ohio. The history of the adoption of the manager plan in Dayton plainly shows that it did not come in consequence of the adoption of the plan elsewhere, nor in consequence, directly, of the disastrous flood of March, 1913. The individual to whom the credit chiefly belongs is the late John H. Patterson, president of the National Cash Register Company, who inaugurated the movement in the chamber of commerce, organized the campaign committee, and served as chairman of the charter commission.

The progress of the city manager plan since 1913 has been rapid and uninterrupted. More than three hundred cities have introduced the plan in one form or another. The largest city to adopt the manager plan is Cleveland, Ohio, where the plan went into operation January 1, 1924. The case of Cleveland is doubly interesting because it is the first great metropolitan city to try the manager plan, and because also it is the first large city to use proportional representation in the election of the council. If the Cleveland system proves to be a success, the manager plan will doubtless spread even more rapidly than it has in the past ten years and will be taken up by many of the larger cities.

Types of city government in Europe.—Comparison of

the forms of city government found in the United States with those extant in Europe is not always as fruitful as it is interesting, but there is always the satisfaction of perceiving the differences which exist. The English city, like the government of the United Kingdom, is a perfect paradox; in form it is one thing, and in practice it is another. The government of the British city is vested in an elected council. There is a mayor, but he is merely the titular head of the government and he exercises few important powers. The council combines both legislative and executive responsibilities. It functions largely through its numerous standing committees and the large staff of professional, paid officials. In form the system is headless, uncoördinated, and complex, but in practice it is not; for custom, which is the great artificer of political institutions in England, has laid its moulding hand upon municipal government and fashioned it into a smoothly functioning organism. In France also the city is governed by a council elected by popular vote, but in accordance with French tradition the executive is of greater weight than the legislature. The executive head of the French city is a mayor, chosen by the council from its own membership. Associated with him are a number of adjoints, or assistants, also chosen by the council from among its own members, to whom the mayor may delegate much, little, or no power. Both the mayor and the adjoints remain members of the council and take an active part in its affairs. In addition to his legislative functions the mayor possesses extensive administrative powers and is in reality the apex of the administrative machinery of the city. In the exercise of these large powers the mayor is responsible not only to the council, but also to the central administration acting through the prefect. The organization of the

German city is somewhat more complex. The functions of government are divided between a council and an administrative board. The council is elected by popular vote and the personnel of the admistrative board is selected by the council. The members of the administrative board are not generally chosen from the membership of the council, and many of them are paid specialists. The paid professional members of the administrative board serve as heads of admistrative departments, while the unpaid members participate in the deliberations of the board and accept such administrative duties as are assigned to them. The administrative board occupies a peculiar position, being at the same time the upper branch of the municipal legislature and the pivotal organ of administration. The relation of the council to the administrative board is largely that of an advisory, deliberative, and confirming body. The presiding officer of the administrative board, and the chief magistrate of the city, is the burgomaster. The burgomaster has important special prerogatives, but does not occupy a position comparable to that of the French or American mayor.

Types of city government in the United States.—Commentators on American city government in classifying cities according to their governmental organization commonly state that there are three prevalent types of municipal government—the federal type, the commission type, and the manager type. The term "federal" is used to designate every scheme of city government characterized by a mayor and council which are mutually independent and coördinate; in a word, to designate every system of municipal government which follows the principle of separation of powers, as does the "Federal Government" of the United States. But the term is incorrect and mis-

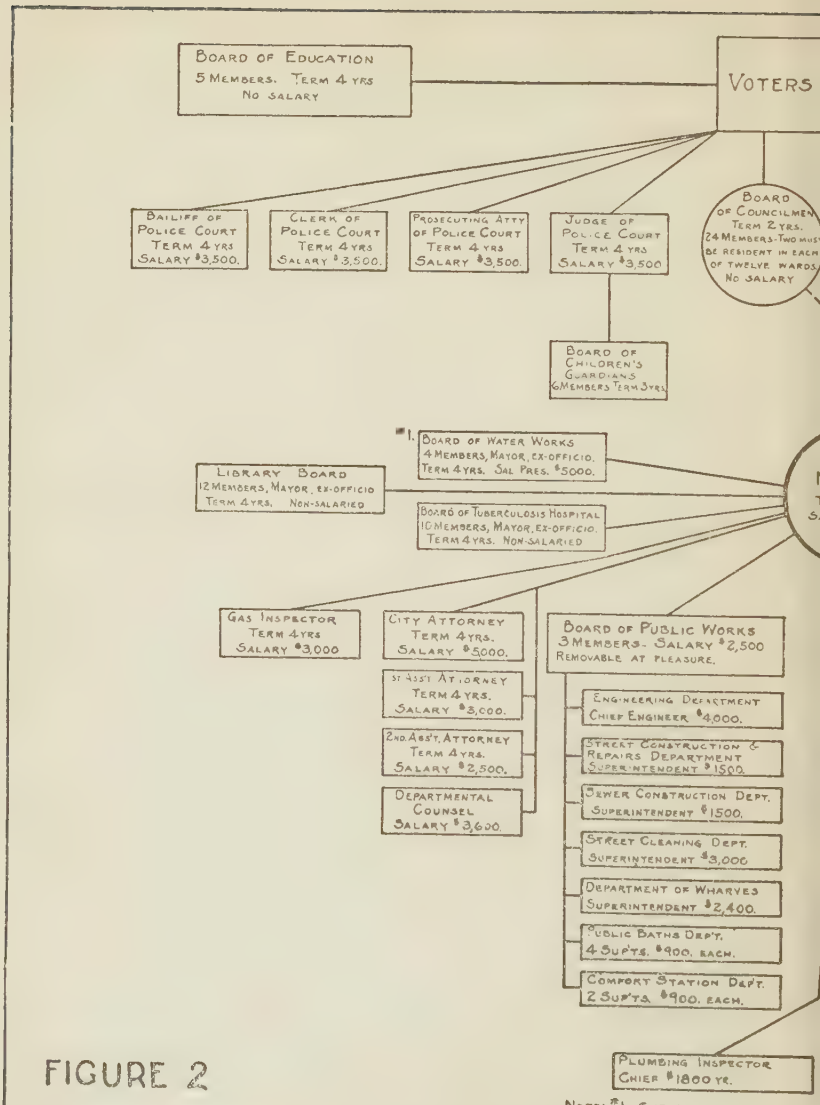
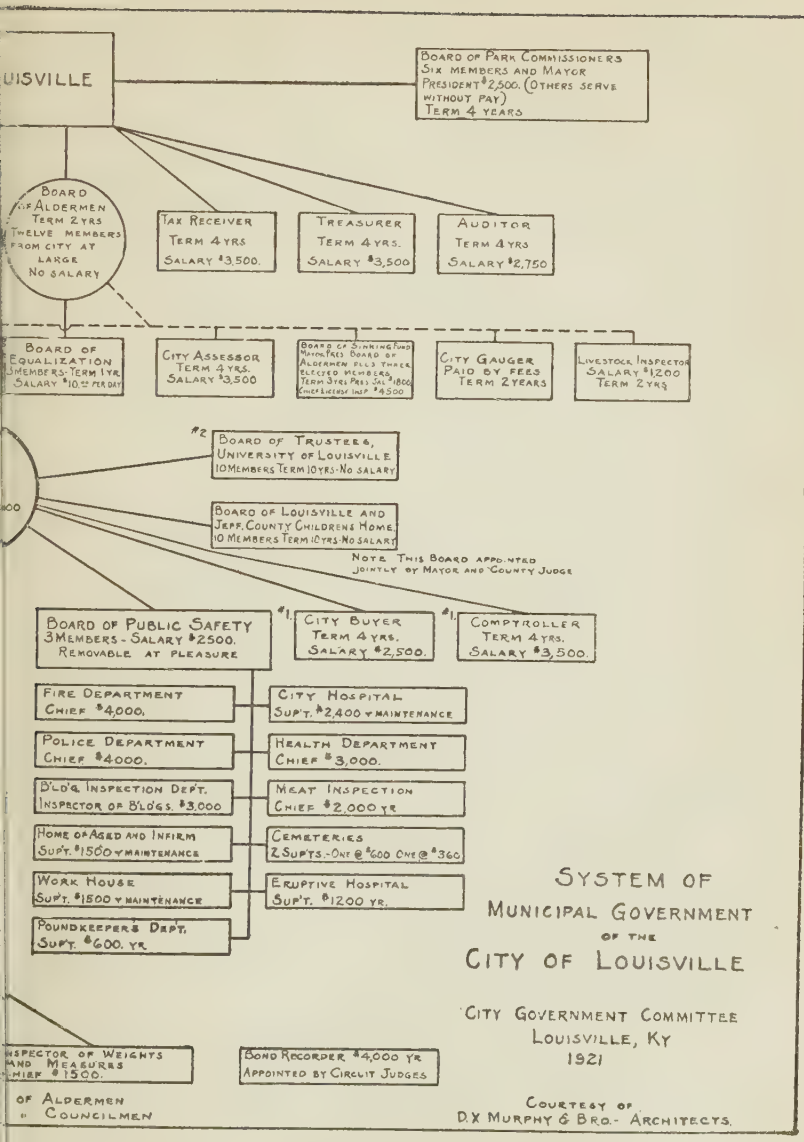


FIGURE 2

NOTE:-*1. SUBJECT TO APPROVAL,
*2. " " "



SYSTEM OF MUNICIPAL GOVERNMENT OF THE CITY OF LOUISVILLE

CITY GOVERNMENT COMMITTEE
LOUISVILLE, KY
1921

COURTESY OF
D.X MURPHY & BRO. - ARCHITECTS.

leading, and should be abandoned. Municipal government is not federal, and the national government at Washington is not federal; it takes both the national government and the state governments to constitute a federal system. Nor is the principle of separation of powers, which constitutes the chief point of resemblance between cities of the so-called "federal type" and the "Federal Government" any more characteristic of that government than it is of the governments of the several states. Furthermore, it is taking too great liberty with facts to assume that all cities which adopt the principle of separation of powers in defining the relation between the executive and legislative organs of the city government are so much alike that they can be grouped under a single head. It would be more accurate to recognize at least two types among these mayor-and-council cities—a decentralized type and a strong mayor type.

The decentralized type.—This is, however, scarcely a type. There are a number of cities in which the chaotic disintegration that was well-nigh universal fifty or sixty years ago still survives. All have a mayor and a council, and beyond that uniformity ceases. Some few retain the bicameral council; a number give the council rather extensive administrative powers and responsibilities; many carry on administration through an imposing array of offices, boards, commissions, and departments which are not subject to any single power or authority. All of them, whatever their peculiarities, are anomalous and obsolete, and are rapidly being displaced by modern forms of government. Two excellent examples are the cities of Wilmington, Delaware, and Louisville, Kentucky. (*See Figures 1 and 2.*)

The strong mayor type.—This type is distinguished by a

concentration of political and administrative power in the mayor comparable to that enjoyed by the President of the United States. The mayor is made responsible for the appointment of virtually all of the important administrative officials of the city, and quite frequently is exempted from the requirement of councilmanic confirmation. But even when the mayor's appointments are subject to the approval of the council, the fact that the dispensation of the patronage is centered in his hands enormously enhances the weight and influence of the office, just as it does in the case of the President. The mayor is likewise given extensive power to remove administrative officials, and in many instances this power is absolute and unrestricted. On the political side the powers of the mayor are equally large. The veto power he has as a matter of course; and also the power to address messages and recommendations to the council. In some cities he is authorized and obliged to attend the meetings of the council, and may participate in debate and discussions. Cities having the budget system generally make the mayor responsible for the preparation and introduction of the annual budget, as well as for its administration after adoption. This gives the mayor a commanding position with reference to municipal finance.

The council in the strong mayor plan occupies a position of secondary importance; it being the purpose of this system to make the mayor the head of the city government in a very real sense. The unicameral council is now universal. As a rule the council is small. Both the ward system and the general ticket system are used in the election of councilmen, the former being preferred in most places. The council has important legislative powers and its financial powers are often very great indeed; but in the exercise of

all of these powers the council is so largely subject to the influence and power of the mayor, and is generally so overshadowed by the mayor that its rôle is not a conspicuous one.

A few cities, of which New York is the pre-eminent example, have modified the strong mayor plan by the introduction of a board of estimate and apportionment, consisting of the mayor and other important elected officials. This board shares the mayor's financial powers, is responsible for letting contracts, has certain powers with reference to public improvements, and in some cases grants public utility franchises. The mayor, however, is not deprived of his administrative powers, and is ordinarily the most influential member of the board of estimate and apportionment. The strong mayor type of government is found in practically all of the larger cities of the country. (*See Figure 3.*)

The commission plan.—The characteristic features of the commission plan are: (1) All legislative and executive powers are concentrated in a small body of five or seven members, known as the city commission; (2) The commission as a body acts as the city council and as an executive board to direct the city's administrative establishment; (3) The commissioners individually act as heads of the various executive departments of the city; (4) The commissioners are elected at large on non-partizan ballot, and their terms rotate so that all of the places do not have to be filled at a given election; (5) One of the commissioners is designated as mayor and president of the commission, but does not have any greater power or authority than his colleagues. There are variations from these general features. A few cities under the commission plan do accord more extensive powers to the mayor than to the

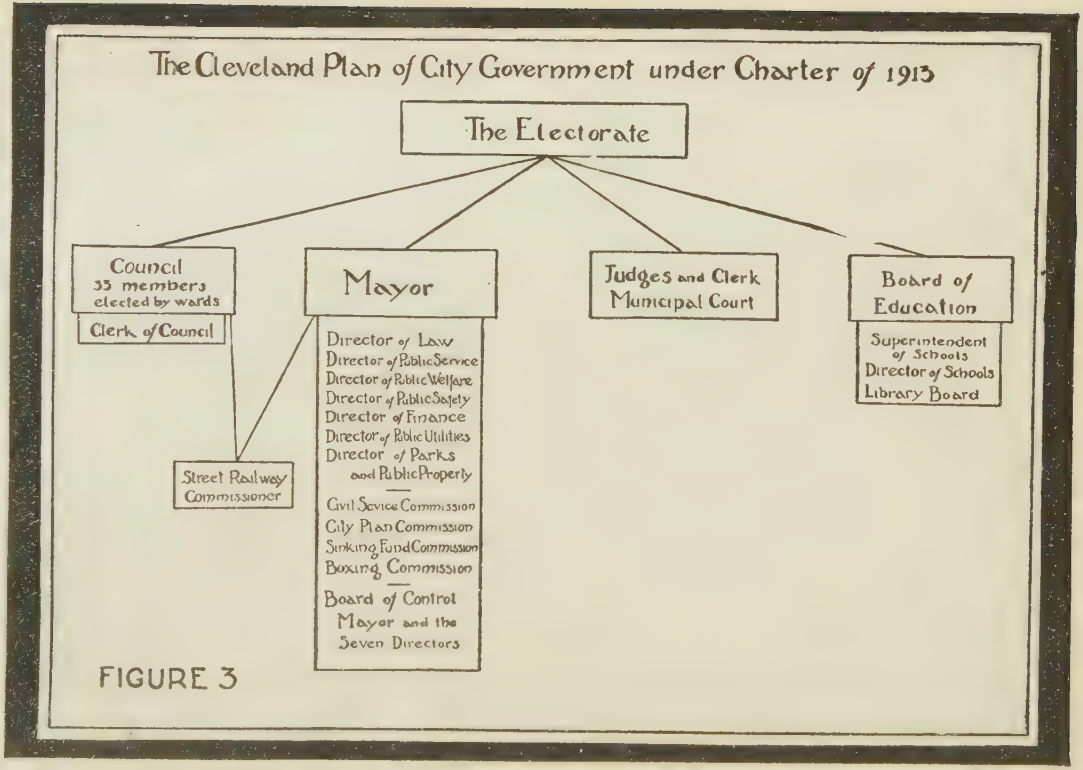

The Cleveland Plan of City Government under Charter of 1913
The Electorate
Council
35 members
elected by wards
Clerk of Council
Street Railway
Commissioner
Mayor
Director of Law
Director of Public Service
Director of Public Welfare
Director of Public Safety
Director of Finance
Director of Public Utilities
Director of Parks
and Public Property
Civil Service Commission
City Plan Commission
Sinking Fund Commission
Boxing Commission
Board of Control
Mayor and the
Seven Directors
Judges and Clerk
Municipal Court
Board of
Education
Superintendent
of Schools
Director of Schools
Library Board

FIGURE 3

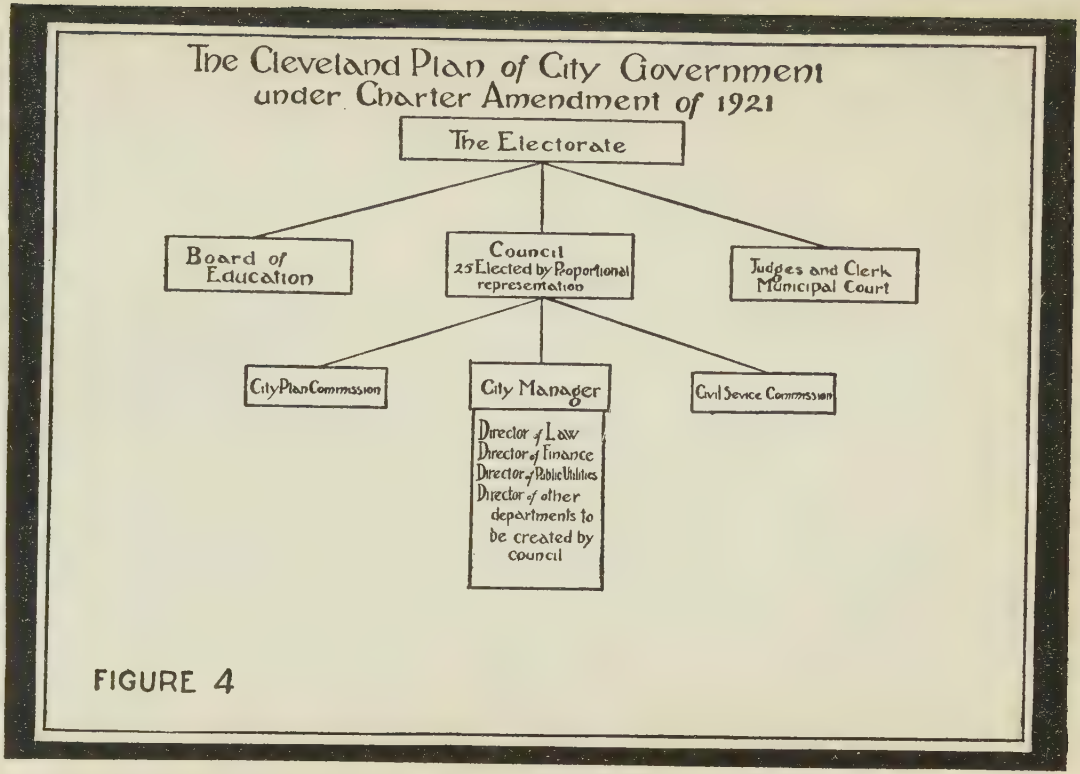

The Cleveland Plan of City Government
under Charter Amendment of 1921
The Electorate
Board of Education
Council
25 Elected by Proportional representation
Judges and Clerk Municipal Court
City Plan Commission
City Manager
Civil Sevice Commission
Director of Law
Director of Finance
Director of Public Utilities
Director of other departments to be created by council

FIGURE 4

other commissioners. In one or two cases he has power to veto acts of the commission; he is empowered in a few cities to assign the commissioners to their respective portfolios; and he is sometimes given extraordinary police powers. There is some variety of practice in determining which commissioner shall be mayor. The more common practice is for the commission to elect one of its own members to that office; in some cities the mayor is directly elected as mayor and as head of a specified department; in other cases it is provided that the commissioner receiving the highest vote shall be mayor. Likewise there is some variation in the method of assigning the commissioners to administrative departments. Generally this is done by the commissioners acting as a body; but it is sometimes one of the functions of the mayor, and in a few cases the commissioners are elected to specific departments. The initiative, referendum, and recall are sometimes given as characteristics of the commission plan, but they are no more peculiar to the commission plan than to the strong mayor plan and the manager plan, in connection with which they are also very often found. (*See Figure 5.*)

The manager plan.—There is much uniformity among cities which have adopted the manager plan by charter. However, a number of cities claiming to have city manager government have simply by ordinance grafted the office of city manager on to their old systems of government, and these naturally do not exhibit many uniform characteristics. They can hardly be said to have city manager government in the proper sense. The fundamental characteristics of the genuine city manager system are: (1) Legislative and executive powers are concentrated in a council or commission; (2) The commission or council discharges its executive functions through a city manager

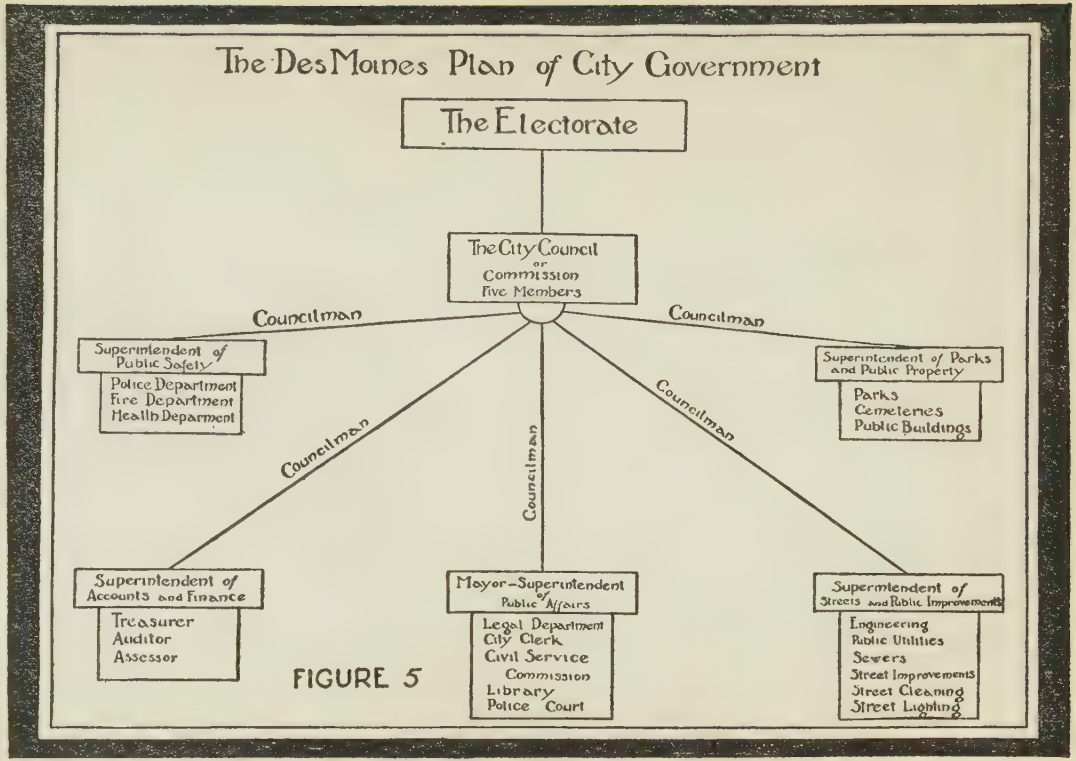

The Des Moines Plan of City Government
The Electorate
The City Council or Commission Five Members
Councilman
Councilman
Councilman
Councilman
Councilman
Superintendent of Public Safety
Police Department
Fire Department
Health Department
Superintendent of Parks and Public Property
Parks
Cemeteries
Public Buildings
Superintendent of Accounts and Finance
Treasurer
Auditor
Assessor
Mayor-Superintendent of Public Affairs
Legal Department
City Clerk
Civil Service Commission
Library
Police Court
Superintendent of Streets and Public Improvements
Engineering
Public Utilities
Sewers
Street Improvements
Street Cleaning
Street Lighting

FIGURE 5

appointed by it and holding office at its pleasure; (3) The city manager as head of the executive system has authority to appoint and remove all heads of departments and their subordinates; (4) The council or commission is a small body whose members are generally elected at large, though there is recently a tendency toward larger councils elected on a local basis or by proportional representation; (5) The president of the council is mayor of the city, but has no special powers. (*See Figure 4 for graphic illustration.*) There are some variations from these standard principles, but they are not sufficiently numerous or important to receive much notice. There are one or two cities in which the manager is appointed by the mayor. The mayor in a number of cities is elected by popular vote instead of by the council, though he serves as president of the council as well as mayor. In one or two cities the manager is also mayor. In a number of cities the manager's power of appointment is restricted by the requirement of councilmanic confirmation, and in several cases the council or the mayor controls most of the appointments in the administrative service. There are a few cities which give the manager a fixed term of office and impose limitations on the council's power to remove him.

The *Strong Mayor Plan* in theory and practice.—Of the three principal types of municipal government now prevalent in the United States, the strong mayor plan is the oldest and the most conformable with traditional American principles and practices. It represents an attempt to rehabilitate city government without abandoning the precious idea of separation of powers and checks and balances—an effort to cure the most serious civic ills resulting from the organic disintegration of city government without departing from the basic principles underlying this dispersion of power and authority.

In theory the strong mayor plan is exceedingly simple. The outstanding defect of democracy in this country, so reformers for a generation or two have been saying, is its failure to make provision for responsible and effective leadership. As Dr. Charles A. Beard has aptly put it, American political institutions have been predicated upon the doctrine of original sin—upon the belief that every public official and every aspirant to public office is actually or potentially a scoundrel and therefore not to be trusted with power and responsibility. Hence the endeavor to scatter official authority so widely among independent organs and agencies of government that no one person or body of persons may exercise a decisive or dominating influence in the processes and operations of government. But experience has demonstrated the fact that division of authority means division of responsibility and that division of responsibility means irresponsibility and impossibility of control. Experience has also taught that efficiency in government can only be achieved through unity of purpose and action under effective leadership. The strong mayor plan was designed to overcome these defects without sacrificing the characteristic form and principle of American city government. The mayor is elected by the people as executive and political head of the city government. All administrative departments and agencies being under his control and direction, the integrity, efficiency, and economy with which the city's business is transacted depends entirely upon him, and he is directly and clearly responsible to the people for everything that goes amiss. Moreover, the mayor is elected by the people not only as their chief executive, but as their political leader. As a candidate he advances policies and measures that he proposes to carry out, if elected; and as mayor he

assumes a leading rôle in the formulation of policies and the settlement of leading questions. Here certainly is centralization of power and a corresponding centralization of responsibility, and likewise an opportunity for big and effective leadership.

The record of the strong mayor plan is replete with paradoxes. Examples of the best and the worst in municipal government are to be found under this plan, and often in the history of a single city. The explanation is a simple one. It is often said that autocracy may produce the best or worst possible government, depending upon the character of the autocrat; and the strong mayor plan has this much in common with autocracy, that its success or failure hinges entirely upon the character of one person—the mayor. The autocrat comes into power by virtue of the accident of birth; the mayor is borne into power by virtue of a fortuitous combination of political forces. Elected by popular vote, and commonly upon a party ticket, it is seldom possible for a mayor to ignore political considerations in any action he takes. If he is a person of ability and integrity, he will be master of the political forces surrounding him or at least will not be subservient to them; but if he is weak or corrupt, the city will be dominated by unrighteous political influences and will be dragged to the lowest depths of misgovernment and maladministration. America has seen nothing finer than New York under Mitchel, Philadelphia under Blankenburg, Cleveland under Johnson; and it has seen nothing worse than the same cities under other mayors whose very names are symbolical of the basest in American political life.

The theory of the strong mayor plan is so simple and so plausible that it is difficult for the citizen whose mind does not penetrate beneath the surface of things to under-

stand its failures. It completely unifies the executive machinery and locates responsibility in a chief executive directly accountable to the electorate; and at the same time it imposes upon the chief executive the duty and responsibility of leadership in large matters of policy. Certainly this system would appear to possess the essential elements of sound governmental structure—simplicity, unity, responsibility. There are, however, two serious flaws in the theory. The first is to be found in the fallibility of the electorate. The people do not always choose honest mayors, to say nothing of able mayors. And obviously the very centralization that is the great virtue of the system when the mayor is honest and able becomes its great vice when he is dishonest or incompetent, or both. The second flaw in the theory of the strong mayor plan is the chasm that exists between the mayor and the council. The responsibility of the mayor in the determination of policies far exceeds his power to get results, because his relation to the council is essentially negative. When there is a party bond between the mayor and a majority of the council, it is quite possible for the mayor to exercise a constructive influence in legislative matters, provided he is willing to pay the price in patronage and "pork." But when the council falls into the hands of the opposing party or faction, the mayor is confronted by almost insuperable opposition and often finds his hands very much tied. The council, on the other hand, occupies an equally anomalous position. It cannot control the mayor and he cannot control it, and yet it cannot function independently of him nor he of it. In a word, the trouble is the old vicious circle of checks and balances.

The *Commission Plan* in theory and practice.—Though the origin of the commission plan was fortuitous, its rapid

extension throughout the country came in response to a widespread feeling of dissatisfaction with municipal government of the disjointed, check-and-balance type. The unity of the commission plan was its most appealing feature. By uniting all powers and responsibilities of municipal government in a small body of elected commissioners, it promised to eliminate those demoralizing delays, deadlocks, divisions of authority, and evasions of responsibility that result from dispersion of authority. By making the commissioners heads of executive departments as well as councilmen, it was supposed there would be a double gain. Those who made the laws, it was argued would be especially qualified to administer them, and conversely those who had to administer the laws would be well fitted to make them. Moreover, it was claimed there would be a doubling of responsibility, because it would be impossible under the commission plan for the executive to excuse its failures by accusing the council of improper and inadequate legislation, or for the council to blame the executive for rendering legislation ineffective through maladministration and incompetence.

It was also contended for the commission plan that the election of commissioners at large and on a non-partizan basis would at once cure the evils of the ward system, destroy the power of political machines and bosses, and draw into the service of the city men of the highest quality. Owing to the simplicity of its structure and operation, the smallness of the commission, and the brevity of the ballot, it was believed that the commission plan would afford the people a means of voting intelligently and choosing the best available men to be entrusted with the government of the city. These men would devote their entire time to the work of the city and would be compensated accordingly

and it was therefore supposed that men of outstanding rank in business and professional life would seek election to the city commission.

There have been few occurrences in our municipal history more remarkable than the rise and decline of the commission plan. Heralded as the sovereign remedy for all of the ills to which municipal government is heir, it swept the country like a tidal wave in the period from 1901 to about 1915; and then as experience disclosed certain grave and irremediable defects, its progress was halted, and since that time some seventy cities have abandoned the commission plan, either returning to the mayor-and-council form or adopting the manager plan. The city manager movement has in fact very greatly accelerated the reaction against the commission plan, which now stands discredited in the very cities where its popularity was once greatest.

What are the defects which have occasioned this amazing reversal of opinion? Perhaps the most authoritative analysis of the weaknesses of commission government is to be found in an article by Mr. Charles M. Fassett, which appeared in the *National Municipal Review* for October, 1920. Having been for nearly ten years a city commissioner in Spokane, Mr. Fassett's appraisal of the commission plan is predicated upon a rich experience. The counts in Mr. Fassett's indictment of the commission plan may be summarized as follows:

1. Only men who are adepts in politics can regularly succeed in getting into office by popular election; and men who have been successful executives in private business do not ordinarily possess political aptitudes and will not enter into a political contest. The consequence is that the administrative affairs of the city are managed by amateurs.

2. When by chance a person of administrative experience and ability is elected to the city commission, it is difficult for him to administer his department efficiently without making so many enemies as to preclude all possibility of re-election.

3. Placing administrative and legislative functions under one body has, contrary to all theory, a disjunctive and demoralizing effect. If the commissioners are elected directly to their respective departments, each will feel that he has a special commission to operate his department independently of all others, and harmonious coöperation is very difficult to secure. But if the commissioners are assigned to departments by the mayor or by vote of the commission, the stage is set for internal deals and intrigues which will completely destroy the unity of the commission.

4. Politicians of the old school eventually get possession of a majority of the commissionerships, and then the city is in as bad condition as before the adoption of the commission plan.

To these may be added other objections which are held to be equally fatal. The complete centralization of the functions of appropriating, spending, and auditing public funds in a single body, as is true under the commission plan, is regarded as contrary to generally accepted principles of sound financial procedure. Log-rolling seems to be another characteristic vice of the commission plan, the commissioners being more or less obliged to practice it in order to get along together at all. The lack of clear lines of responsibilty is also one of the most serious defects of the plan. In legislative matters responsibility is obviously divided among the three, five, or seven members of the commission, and in administrative matters there is no chief executive except the commission as a body. Nor is it possible always to hold each commissioner solely responsible for his own department, because the commis-

sion frequently interferes with the management of a department by the commissioner at its head.

The *Manager Plan* in theory and practice.—The theory of the manager plan is easily grasped if it is remembered that the commission-manager plan (which is the type of city manager government that has had the greatest vogue) originated as an "improved commission plan." Contrary to expectations, the commission plan did not accomplish the divorce of politics and administration. The members of the city commission, being elected officials, could not escape the necessity of political activity and support in order to get into office and remain there. Naturally, then, they were bound to a greater or less degree to administer their respective departments on a political basis, and each commissioner's department became the nucleus of his political strength. To obviate this fault, the manager plan places upon the commission, or council, whichever form exists, the full responsibility for administration, but requires that it shall discharge this responsibility through a city manager, who is not an elected official, but is appointed by the commission to hold office at its pleasure. City manager charters very frequently state that the manager shall be chosen solely on the basis of his administrative qualifications and attainments and stipulate that the manager shall have entire freedom in the selection of his subordinates. Thus it is supposed that the representative body will be made clearly responsible for placing at the head of the city's administrative establishment a man thoroughly qualified by training and experience to give the city efficient and economical administration, and that the manager in turn will not only have no interest in politics, but will enjoy sufficient freedom from political influence and interference to enable

him to transact the city's business in a businesslike way. And if the commission should attempt to dictate to the manager in appointments, removals, or other administrative matters, there could be only two results. The manager, if he were a man who valued his personal and professional reputation and placed efficient administration above all other considerations, would refuse to acquiesce and would thus force an issue between himself and the commission, which would compel the commission to justify its action before the public. On the other hand, if the manager were of the vacillating type, he would yield to the demands of the commission, and in so doing would pass on to the commission all responsibility for the quality of the city's administrative service. In both cases the situation of the commission is difficult, but its position before the public is invariably stronger if mismanagement and maladministration result from letting the manager have his own way rather than from his following the dictates of the commission.

It is a conspicuous characteristic of both the strong mayor plan and the commission plan that the conduct of administration is committed almost wholly to amateurs. Elected executives are nearly certain to be amateurs in matters of administration. They are elected because they succeed in winning popular favor, and not because of their special fitness, by virtue of ability and experience, for executive work. It is the candidate who has an appealing personality, who has strong political backing, who is well advertised, and who is master of the art of ingratiation—it is this candidate who is likely to succeed at the polls, and not the one whose chief claim to popular favor is his administrative talent and experience. And it is a commonplace fact that men who possess the requisite ability and experience

on the administrative side, very rarely have the political capacity necessary to enable them to get into office by popular election. Under the manager plan it is almost certain that the chief executive will be chosen largely on the basis on his administrative qualifications. Regardless of the fact that the council in appointing a manager may be governed in the main by political motives, it is nevertheless true that more attention will be given to the administrative attainments of the persons under consideration for that position than is given to such qualifications in the case of candidates for the office of mayor or city commissioner in a popular election. The reason is that the commission or council, because it appoints the manager, is responsible to the people for his success or failure as an executive, and the people are always more critical of executives who are selected for them than of executives they select for themselves. There is, therefore, a noteworthy tendency to choose men of demonstrated executive ability to fill the office of city manager, and such men naturally demand a higher degree of administrative fitness in their subordinates than is expected by elected mayors or commissioners. The manager plan, therefore, if it does not produce administration by experts, at least does not result in administration by outright novices.

Another purpose of the city manager plan is to bring about a more definite centralization of responsibility than is achieved either by the strong mayor plan or by the commission plan. Under the former there is a constant shifting of responsibility between mayor and council, and under the latter there is a division of administrative responsibility among the five or seven commissioners as well as a confusion of political and administrative responsibilities because of the dual position occupied by each

commissioner. The manager plan accomplishes complete unification of administrative responsibility and at the same time precludes any possibility of "passing the buck." All responsibility for the government and management of the city, whether it be of a political or an administrative nature, is in the first instance focused upon the council. Administrative responsibilities, however, are to be discharged through the city manager who is in complete charge of the city's administrative system. This does not relieve the council of its responsibility; the manager is the agent of the council, is appointed by the council, is removable by it at will, and acts under its authority in all he does. The council, therefore, is clearly and solely responsible for deciding what the city government ought to do and how it should be done, for providing the means for its accomplishment, and for getting a city manager who can and will execute its decisions with the highest degree of efficiency and economy.

One of the most admired features of the manager plan is that of the controlled executive. Under the strong mayor plan and the commission plan, the executive once installed in office by virtue of popular election is practically unaccountable and uncontrollable for the duration of his term. Provision is usually made for removal in case of the commission of criminal offences, and in many cities for recall by popular vote The former is very rarely needed, and the latter is so difficult to invoke, so expensive, and of such uncertain outcome that it is seldom used. For sheer incompetence and disregard of public will there is no effective remedy, but to await the end of the incumbent's term and then refuse to reëlect him. If he does not seek reëlection, there is no remedy at all; and even if he does come up for reëlection it is possible to raise so many

diverting and beclouding issues that the candidate's past official record is lost to view. But under the manager plan the executive is under constant, continuous, and effective control. He is not appointed for a definite term, and may be removed at any time and for almost any cause.

Another claim that is advanced in respect to the manager plan is that it greatly improves the character of the city council or commission. This is done by removing the council from all direct contact with the administration and the distribution of official patronage, so that its attention is engaged by the larger questions of policy instead of by petty political matters. The elimination of the ward system and the introduction of non-partizan elections are also credited with aiding in this result.

The manager plan is now about ten years old, and although its full possibilities have not yet been explored, there has been enough experience to demonstrate that it is far from being a panacea. But it should be remarked that the more thoughtful proponents of the plan have never made any such claims. The case for the manager plan rests not upon preposterous claims of perfection, but upon the simple proposition that it is consistently superior to every other system yet tried, which is a contention that is more easily defended. Conceding that in a great many cases the manager plan has not lived up to its advance notices and that many unforeseen defects have become apparent, it is still possible to maintain that it has kept up a high level of performance more consistently than any other plan. It would be futile to deny that there are numerous cases of good government under the strong mayor plan and under the commission plan that are unsurpassed by anything that can be shown for the manager plan; but it must be admitted that there are equally

numerous cases of bad government under the strong mayor plan and the commission plan that are unapproached by the worst experience ever recorded under the manager plan. Whether this is attributable to the fact that the manager plan has not yet been subjected to the same crucial tests as the other plans have, or to its inherent superiority, will be readily demonstrated when the manager plan is extended to the larger cities.

As the balance now stands the manager plan must be given credit for the following achievements:

1. Extreme simplification of the structure and operation of government, this being attained by the complete unification of powers and the shortest of short ballots.

2. Improvement of the quality of city councils by reducing the size of the council, prescribing the entire city as the unit for the election of council members, and concentrating upon the council complete responsibility for the conduct of municipal government but freeing it from the demoralizing entanglements of administrative detail.

3. A non-political executive service. In the great majority of cases technical qualifications have been the principal consideration in the selection of the city manager, and have likewise been the ruling factor in the manager's choice of his subordinates. And as a result for the first time in American history we have what has long been the rule in European countries—a body of non-political, professional municipal executives who are called from city to city just as corporation executives move from one position to another. This idea has been rather slow in taking root in this country but there are now more than forty cases of managers being called from a small city to a larger one at an increased salary, and there are several managers who have been thus promoted two or three times. Furthermore the practice is gradually growing of advancing men from the departmental service to managerial positions.

4. The introduction of better business methods and the attainment of a high degree of efficiency and economy in the ad-

ministration of public affairs. In this regard the record of the manager plan is unquestionably remarkable.

It now remains to note the defects of the manager plan as revealed by experience. It is perfectly patent that the character of the operation of the manager plan hinges upon two main factors—the commission, or council, and the manager. Care has been taken in nearly all manager charters to introduce expedients designed to improve the quality of the council, but these do not always work. It occasionally happens that politicians of the old stamp obtain control of the council and find the enormous powers possessed by the council just made to order for their purposes. To prevent results of this kind many champions of the manager plan advocate the election of the council by proportional representation and this step has been taken in a few places, notably Sacramento, California, Kalamazoo, Michigan (both since declared unconstitutional), Ashtabula, Ohio, and in the recently adopted charter amendment of Cleveland, Ohio. The promise of proportional representation is great, but much more experience is needed before final conclusions as to its worth in connection with the manager plan are possible.

The second determinative factor in the operation of the manager plan is the manager. While the character of the manager may be dependent more or less upon the political composition of the council, it is too often the case that a council desiring to obtain the best manager within its means, regardless of political considerations, finds itself gravely handicapped by the dearth of properly qualified managerial material. There being no class of trained municipal executives in this country it has been necessary to recruit city managers from private life, and the great

majority who have gone into the work have had little or no previous training or experience that would fit them for it. This largely accounts for the high rate of mortality in managerial positions, which has been so demoralizing to the city manager profession and has so greatly impeded the success of the manager form of government. It is now becoming clear that the position of city manager has no close counterpart in private life, and that the incumbent of such a position should not only possess unique temperamental equipment, but should be prepared for its arduous exactions by special training and experience. Until there is an abundance of such material one of the chief difficulties of the manager plan will be the city manager.

Perhaps the most persistent defect of the manager plan is the failure to draw a satisfactory line of demarcation between the functions of the council and the manager. As the appointee of the council and subject to removal by it, the manager is clearly under its control. There has been a fear, moreover, that the council would use its power to intervene between the manager and his subordinates and to meddle with the details of administration, although the manager plan is predicated upon the theory that the administrative functions of the council may be exercised only through the manager. Many of the more recent manager charters, therefore, contain specific restrictions upon the power of the council to deal with the administration otherwise than through the manager and prescribe severe penalties for the violation thereof. The effectiveness of such provisions must of necessity depend upon the cordiality of the relations between the council and the manager; for with the council's control over the compensation and the tenure of office of the manager it can accomplish its purposes indirectly without transgressing the

charter limitations. It is probable, however, that no more difficulty has been occasioned by the tendency of the council to usurp the functions of the manager than by the disposition of the manager to encroach upon the functions properly belonging to the council. Nothing is clearer than that the manager plan is founded upon the proposition that the manager should have no part in the determination of matters of policy, except to act as the adviser of the council on questions submitted to him. Nevertheless a great many managers have yielded to the temptation to assume a rôle of leadership in the council and to make direct appeals to public opinion. The ultimate result in almost every case has been that the manager has become a storm-center of political controversy, thus losing his usefulness as an executive and often wrecking his career. While it is probably impossible to draw a precise line between the functions of the manager and those of the council, it must be admitted that if the latter is to be responsible to the electorate its power cannot be curtailed by conceding a position of independence to the manager. There will be trouble on this point until both councils and managers forget American political traditions and accommodate themselves to an entirely new relationship between legislature and executive.

The objection often urged against the manager plan, that it makes no place for political leadership because there is no one individual to stand before the people as their annointed leader in matters of political concern, is not to be taken too seriously. The functions of municipal government are primarily administrative, and hence there is not the need for a political Moses that there may seem to be in state and national government. Furthermore, the experience of the strong mayor plan shows that the

political leadership of a single individual tends to degenerate into demagogism. It is entirely possible under the manager plan for effective group leadership to develop in the council; that in fact is precisely the result that the proponents of the manager plan predict and desire, because they believe that such leadership under proper conditions is more representative, more responsible, and less inimical to good government than the leadership of one person.

Another alleged defect of the manager plan is the fact that it fails to provide for the direct accountability of the manager and the executive service to the people for all administrative acts. In some cities this objection has been met by making the manager subject to recall by the people. The fact of the matter is that it is doubtful whether there is any virtue in direct popular control over administration. There is abundant experience pointing to the conclusion that the electorate is inherently incapable of intelligent observation and superintendence of administrative matters, and that better results are obtained by the delegation of this function to a representative body.

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CHAPTER IV

MUNICIPAL POLITICS

Back in 1904, under the title of "The Shame of the Cities," Lincoln Steffens published a memorable series of magazine articles that made up one of the most sordid and shocking narratives of bribery, boodle, and bossism ever brought to the attention of the American people. If anything was needed to confirm the already prevalent belief in the utter depravity of municipal politics in this country, Mr. Steffens' articles supplied it most abundantly. But despite the absolutely damning character of the indictment, these articles were in one sense scarcely fair to the American city, for they did not duly take into account the singular handicaps against which our cities must struggle in maintaining the purity of their political processes. Because of the many adverse conditions peculiar to city politics in the United States, it is scarcely fair to compare American municipal politics with municipal politics in European countries, nor even with the politics of the state and national governments in this country.

Political conditions in the city.—In approaching the subject of American municipal politics it is important to bear in mind the fact that the political position of the city in the United States is even less happy than its legal position. Our party system is organized on a state and national basis, and the city is in a position of vassalage. Politically, it is merely a subordinate unit of the general

party organization, and is sacrificed to the exigencies and vicissitudes of state and national politics, even if it is not exploited. The bigger men in each party are preoccupied with the affairs of state and national politics, and consequently leadership in municipal politics tends to go by default to small-fry politicians. It should be remembered that the municipality in this country is seldom endowed with power ample to deal with the broader questions of social and economic policy and consequently does not present an attractive field of activity to the political leader with constructive imagination and ability; but because of the extraordinary opportunities for peculation and plunder the city does contain many attractions for politicians of inferior type. Nor should it be forgotten that the population of American cities is a hodgepodge of races and religions drawn from all quarters of the globe, lacking in almost every semblance of coherence and unity; which is not the case in the cities of Europe, nor in the rural sections of the United States. To have clean politics it is necessary to have public opinion that is alert, active, and readily crystallized into a strong political force, and it is obvious that this is nearly impossible to achieve with the "omnium-gatherum" of races found in the average American city. The foregoing are some of the special circumstances that should be borne in mind if we are to do justice to the city in considering its political pathology.

The party system in the city.—Reformers almost unanimously deplore the formation of party lines in the city in accordance with the alignments prevailing in the state and the nation. Partizanship, it is claimed, is the great vice of municipal politics. It is pointed out that local issues are not identical with national issues; that there can be no distinctively Democratic or Republican policies

on such questions as street improvements, the granting of franchises, or police administration; and that the projection of such party divisions into municipal affairs merely serves to obscure real municipal issues. Furthermore, it is argued that the extension of the national party system to cities results in the exploitation of the city for the advantage of the general party organization, particularly in such matters as appointments, contracts, and franchises. And it is likewise contended that it is owing to the influence of partizanship in municipal affairs that the positions in the public service of the city are so generally filled with persons of inferior ability and moral fibre. On the other side of the question, however, it is asserted that people simply will not divide in one way in national and state politics and in a wholly different way in municipal politics. It is said that even when purely municipal parties can be formed, they are transitory and instable, and are incapable of commanding the permanent allegiance of a considerable portion of the municipal electorate. Moreover, it is said that regardless of the existence of separate municipal parties the national parties are obliged to extend their organization to cities in order to reach the municipal electorate on general questions, and that consequently they are bound to be more or less active in local affairs. The claim is also made that it is just as easy for the voters of a city to function through the Democratic or Republican parties as through a "fusion party," a "good government party," or a "citizens' party," which are usually devoid of any unifying principle except common opposition to the persons in control of the government of the city.

Many expedients have been employed to offset the influence of partizanship in municipal politics, if not to

eliminate it altogether. One device that is rather common is the elimination of the coincidence of municipal and general elections. The occurrence of a national or state election on the same day or even in the same year as a municipal election naturally tends to becloud municipal issues and confuse the mind of the voter. Hence the laws of many states provide for holding municipal elections in the odd-numbered years, when there are no general elections. A great many cities, also, have experimented with non-partizan elections, providing for nominations without party action and ballots without party designations of any sort. These devices have not, of course, prevented parties from backing certain approved candidates and conducting a campaign in their behalf. Still another expedient designed to weaken the grip of parties and enhance the strength of the independent vote is the scheme of preferential voting, which has been introduced in a number of cities. This reform has been somewhat of a disappointment even to its own champions, not merely because it has failed to eliminate partizanship in municipal elections, but because the second-choice votes, if they must be counted to determine the election, may assist in defeating the first-choice candidates of the voters who cast them. None of these antidotes for partizanship having been wholly successful, many persons are now advocating proportional representation as an unfailing remedy. But the results of the first election held under proportional representation in Cleveland, Nov. 6, 1923, show conclusively that this reform cannot be relied upon utterly to eradicate partizanship. The Republican "organization" in this election readily obtained fourteen of twenty-five places. Before leaving this topic it might not be amiss to say that there is one reform that is feared above all

others by partizan chiefs in municipal politics; and that is the curtailment of the patronage by the extension of the merit system. The patronage is the cornerstone of party solidarity and the stronghold of party power. When it fails, the party organization naturally disintegrates.

Municipal elections.—In establishing qualifications for the exercise of the electoral privilege in cities we have followed in this country a principle essentially different from that upon which municipal suffrage is based in European countries. The European theory is that the problems of municipal government are inherently so different from those of the general government that the municipal electorate should be of different composition from the general electorate. By property or taxpaying limitations there is established a special municipal electorate which excludes numerous residents of the city who are qualified to vote in the general elections, where no such restrictions obtain. In some countries, also, non-residents possessing the requisite property or tax-paying qualifications are included in the municipal electorate. In the United States, on the contrary, municipal suffrage is differentiated from the general suffrage only by the fact that residence in the city for a stated period is required along with a longer period of residence in the state and country required for voting in state and national elections. For the American practice we claim the virtue of ultra-democracy; for the European practice it is contended that, since municipal government is largely concerned with proprietary matters, purer and more efficient government is produced by confining the right to vote in municipal elections to those who have a direct proprietary interest in the government of the city.

The maintenance of the purity of municipal elections

has always been a major political problem in this country. Corrupt election practices, such as bribery, personation, repeating, stuffing the ballot-box, and false counting, have always been especially prevalent and serious in cities; and unscrupulous political organizations contending for control of the city government have perfected a technique of corrupt practices that is exceedingly difficult to counteract. Elaborate legal safeguards, aimed primarily at municipal conditions, are to be found in the election laws of all the states and often in municipal charters. Of these the most familiar are the pre-election registration of voters coupled with a check-off on election day, the use of an official ballot of standard form, secret voting, party representation at the polls to watch and challenge voters, bi-partizan election boards, limitation and publicity of campaign expenditures, and the prohibition under severe penalties of scores of acts deemed to have a corrupting or degrading influence upon the electorate. While it cannot be said that these precautions have failed, it is true that there is still much to accomplish in the purification of municipal elections.

The length of the ballot is an important consideration in municipal elections, although it is not exclusively a municipal problem. The conglomerate character of the city electorate renders intelligent voting unlikely under the best of circumstances; and where there are many positions to be filled by popular vote the situation is ideal for machine politics. In the rural districts the long ballot does not produce such strikingly bad results because the population is more homogeneous and the positions to be filled by election are not so numerous and obscure as in the city; and in general elections, owing to the wide area over which the electorate is dispersed and the prominence

of the positions to be filled, the number of incumbents to be elected at one time is always relatively small. The short ballot movement is, therefore, essentially a municipal reform and it is significant that practically all of the structural changes in municipal government during the past quarter-century have been grounded upon the short ballot principle. The concrete evidence of this is seen in the strong mayor plan, the commission plan, and the manager plan, which are now the dominant types of municipal government in this country.

The spoils system in the city.—By far the most potent factor in the degradation of municipal politics in this country is the spoils system. In a strict sense the spoils system is defined as the practice of filling public offices in consideration of partizan service rather than of merit, but in a broader sense the term connotes any improper or illegal use of public position for political or personal purposes. A more comprehensive definition of the spoils system would therefore, be the systematic prostitution of the public service in the furtherance of dishonorable or corrupt partizan or personal objects. In this sense of "political piracy," to use the trenchant phrase of Professor Merriam, it may be said that the spoils system has attained its most complete development in the city. There the patronage is most extensive; there place-men are most servile; there public franchises are most numerous and most valuable; there the fattest public contracts are to be found; there the largest and most frequent expenditures of public money are made; there the underworld constitutes a rich field for exploitation; there, in short, is the ideal setting for the development of a vast system of public plunder based upon control of the patronage.

To combat the spoils system it is necessary first to strike

at its tap-root—the patronage. This has been the cardinal purpose of the great movement for civil service reform, which since 1883 has resulted in the adoption of the so-called merit system in something like three hundred American cities. A subsequent chapter of this book is devoted to the operation of the merit system, but at this juncture it seems appropriate to say that the disappointment which many people have felt and expressed concerning the working of this reform should not be allowed to obscure the fact that it is sound in principle, though imperfectly applied. The essential idea of the merit system is that by legal compulsion the test of merit shall be substituted for the test of political servility in the filling of all positions in the public service; and to abandon this in an impulsive reaction against the imperfections of the merit system in practice is to return to a condition which has been utterly condemned by several decades of experience.

The merit system is flanked by many other reform measures designed to curb the evils of the spoils system. Municipal charters and municipal codes contain elaborate provisions safeguarding the granting of franchises, regulating the handling of public funds, tightening contract procedure, and so on. These are not without their value and doubtless have been effective in producing greater purity of public administration, but the key to the problem lies in the character of the official personnel.

Machines and bosses.—The political machine is native to municipal politics. This is not to say that such an organization may not exist and flourish in rural districts, but simply to emphasize the point that the political machine first made its appearance in city politics, and that urban conditions are uniquely favorable to the game

of machine politics. It is common to hear almost any kind of party organization called a machine, but in accurate usage that word applies only to a special kind of political organization. Party organization is normally loose and unwieldy, composed of interacting but more or less disconnected committees. There is no real headship and little close correlation of parts. Now when one person or a small coterie of persons succeeds in getting control of all the interconnected units of party machinery in a given area and shapes them into a well-geared, smoothly functioning mechanism, the result is a political machine. The boss, of course, is the *deus ex machina.* He is the individual who by reason of unscrupulousness, intelligence, shrewdness, courage, or other qualities suited to the particular situation, has been able to form a perfectly regimented organization, and who, therefore, holds the position of command.

Now it must be obvious that in the city conditions are nearly ideal for the building of political machines. The composition of the municipal electorate renders it easily manageable under astute and not too conscientious political leadership; the theater of activity is small enough for one individual to keep in touch with all parts of a large organization; the opportunities to collect tribute from interests desiring protection, or favors from those in possession of political power are unusual; the large number of positions in the municipal service affords an opportunity to use the patronage to build up a large army of retainers and active workers—these and many other indigenous urban conditions are particularly favorable to machine politics.

Special interests in municipal politics.—It is impossible to fathom the realities of city politics unless we can pene-

trate beneath the surface and discover the motivating forces of parties and machines. Working in the hinterland of municipal affairs there are scores of special interests which are quietly but unremittingly active in politics, utilizing parties and machines as agencies for the accomplishment of their own ends. For instance there is the public utility interest. Public utility companies are vitally concerned about franchises, regulatory laws, taxes, and many other matters that are within the scope of municipal government. To forestall adverse action or obtain favorable treatment public utility interests have no hesitation in leaguing themselves with corrupt politicians and political organizations and paying handsomely for services rendered. To what extent the nefarious activities of machines and bosses are attributable to the instigation of the public utility interests cannot be known, but there are very few cities in which the pressure of this special interest is not felt. Organized labor is another special interest that is known to be extensively and aggressively active in municipal politics. Labor is interested not only in the unionization of public employments and in wages and hours in public service, but also in all forms of public outlay that might result in creating employment for members of labor unions and in all phases of legislation and administration that may react upon the policies or endeavors of labor. Though labor exerts a large power directly at the polls, labor leaders do not balk at alliances with machine politicians in order to bring about the results they desire. Large real estate owners and operators also constitute a formidable special interest in municipal politics. Taxation is the big bugaboo of the realty interest, but it is also greatly concerned about all governmental activities that may bring about fluctuations in the

value of real property, as changes in the city plan, the creation of parks and public improvements, the location of terminals, etc. That the employment of machine politicians to manipulate such matters in their behalf is not inconsistent with the ethics of the realty interest has been demonstrated on many occasions. Mention might be made of many other special interests, economic or otherwise, that often engage in pulling the wires in municipal politics. Banks, for example, have been known to resort to political machinations in matters concerning the disposition of public securities or the deposit of public funds; and likewise contractors in connection with the letting of contracts for the construction of public works or the purchase of supplies. Certain religious denominations are also known, under varying circumstances, to wield a potent, though surreptitious influence upon organized politics. Sometimes this is economic in character, as in the case of the Trinity parish in New York, and sometimes it has its roots in other motives. Nor should we omit to note, in passing, the persistent political activity of the underworld which is ever striving to purchase immunity and protection by paying tribute to the dominant political organization. This is a very sketchy and unsatisfactory treatment of a big subject, but perhaps enough has been said to convey to the reader the central idea, which is that municipal politics cannot be interpreted in terms of parties and machines alone, but must be regarded as a complex tissue made up of the interwoven activities of innumerable special interests.

Popular control of city government.—As in the state and the nation, so in city government popular control is predicated upon the use in one form or another of the electoral process. The precautions which have been

taken to guarantee the purity of elections and to stimulate more intelligent use of the ballot have been mentioned earlier in this chapter. Because of the failure of these various expedients to produce effective popular control we have witnessed in the city, as in many of the states, the introduction of the initiative, the referendum, and the recall. The initiative and referendum have not played the striking rôle in municipal politics that they have in state politics. The explanation of this fact probably is that municipal legislation rarely involves controversial matters of high importance, and that city councils are so often in session that there is little need to go directly to the people. The outstanding instance of the use of the process of direct legislation in municipal government is the recent charter amendment of Cleveland, which was adopted by means of the initiative. In the case of the recall, however, the situation is just reversed. The recall had its genesis in city government, and except for the recent case of the recall of the governor of North Dakota, the most notable instances of its use have been the recalling of several mayors.

One very remarkable development in the furtherance of effective popular control of city government has been the founding within the past dozen years or so of civic agencies for investigating and reporting facts to the people of the city. All of the large cities now have municipal research bureaus, voters' leagues, or other organizations of that sort, whose purpose is to keep watch over public affairs and make public the results of their investigations; and no small part of the progress of American cities within the past few years is attributable to the labors of such organizations.

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CHAPTER V

THE CIVIL SERVICE

One of the avowed objects of the founders of American political institutions was to create "a government of laws and not of men"; and although that ideal could not be realized in actual governmental practice, our political thinking has become so indoctrinated with it that we have failed to appreciate the absolutely basic fact that in the last analysis government is nothing more than human nature in its political manifestations. The long reign of the mechanistic conception of government doubtless has had much to do with our indifference to the problem of personnel in public service. So long as it could be supposed that the perversities of fallible humanity could be neutralized by infallible laws, attention was bound to be directed toward the perfection and multiplication of laws rather than the quality of the persons charged with the administration of those laws. Disillusionment has gradually come upon us; we are beginning to perceive that the quality of government varies directly with the quality of our public servants; and that the personnel problem is, therefore, one of the most fundamental of all governmental problems.

The significance of personnel.—The immense number of persons employed in municipal service makes the personnel problem one of commanding importance in city government. The number of persons employed by the

City of New York averages about 70,000; in Chicago the figure is about 30,000; in Boston it is approximately 15,000; in Buffalo it is upwards of 8,000; in St. Paul it is around 4,000. Because scarcely more than one-tenth of the cities of the country report civil service statistics, it is impossible to know the total number of persons engaged in municipal service in this country or to estimate the average number of employees per thousand inhabitants; but the figures given are typical, and clearly show that every city of considerable size numbers its employees by the thousands. Budgetary data show that from 60 to 80 per cent. of the annual expenditures of American municipalities is for salaries and wages, and that personal service is without a doubt the largest factor in the cost of municipal government.

Another reason for the importance of the personnel problem in city government is the extensive influence and activity of municipal employees in local politics. Unlike the employees of the Federal Government at Washington, municipal employees are not disfranchised; nor are they removed from their home communities and dispersed among widely scattered institutions as is generally the case in state government. The thousands of municipal employees in every city must perform their duties right upon the scene of action of all political conflicts occurring in the city, and at the same time are qualified to participate actively in those conflicts by their own votes and by influencing the votes of their families and friends. It is no wonder, then, that in numerous municipal elections the balance of power is held by the employees of the city. They may act merely as the rank and file of the dominant political organization executing orders; or they may act as a result of that instinctive feeling of solidarity which

will develop in any large mass of people having a common stake in a certain organization or institution. In either event they are one of the most potent factors in deciding the issue of control of the government of the city.

History of the personnel problem in cities.—The story of municipal civil service prior to 1883 would be simply a recital of the abuses of the spoils system. Outside of the ranks of idealists and reformers there was no thought of a personnel problem other than that of subordinating every municipal position to the political advantage of the forces in control of the city government. Employees were appointed and removed solely because of their political services or influence; political leaders were professional job brokers and auctioned off municipal positions to highest bidders; jobs were used to provide sinecures for party leaders and workers, and when the supply of jobs ran low, additional jobs were created as the demand required; municipal employees were compelled to pay tribute to the dominant political organization in the form of campaign assessments—in short municipal service was so completely surrendered to the base uses of the spoils system that the city was commonly regarded as the despair of democracy.

The civil service reform movement was many years in gathering momentum, but in 1883 the impact of this movement broke down the outer defenses of the spoils system, and the merit system gained a permanent foothold in American political life through the enactment of the Federal civil service law and the New York law, which was applicable to the larger cities of the state as well as to the state government. Massachusetts in the following year passed a civil service law which extended to all cities of the state. From that time forward there has been slow

but persistent progress in the acceptance of the merit system by American cities. According to the computations of the National Civil Service Reform League there are now no less than 350 cities in this country which have adopted the merit system in whole or in part, and most of the larger cities of the country are included in this number. In a few cases the merit system has been imposed by a general state law like that of Massachusetts, but in the majority of cases it has come through the medium of special legislation or charter provisions.

The record of the merit system is made up mainly of failures and partial successes, and for this reason many high-minded persons have lost confidence in civil service reform and declare that the remedy is worse than the disease. Before concurring in such a judgment it would be well to take into account the conditions under which the merit system has had to operate. The politicians controlling state legislatures, city councils, and charter commissions have not introduced the merit system of their own volition but under the lash of outraged public opinion. Hence they have not been particularly careful or scrupulous in framing the law establishing the merit system, and have rejoiced when defective legislation has rendered the merit system unworkable. Furthermore, in scores of instances, the civil service commission created to administer the merit system has been packed with politicians whose chief ambition has been to thwart and discredit the law they were sworn to uphold. Nor should it be forgotten that at first the merit system was almost a step in the dark. It was such a wide departure from all previous American practice that there was no experience to mark out the pitfalls and danger-points. The paramount need in the beginning was the eradication of the spoils system;

and the merit system was regarded as merely a mechanism for excluding the spoilsmen and safeguarding meritorious employees against political interference; the force of the merit system was therefore exerted in a negative direction, and the most honest administration of the merit system was hardly more than a process of setting up the hurdles or increasing their height after they had been knocked down by the politicians. The past few years, however, have witnessed a profound change in our conception of the personnel problem and the functions of the merit system. We perceive that the merit system is not merely a matter of "keeping the rascals out," but of enlisting in the service of the city the finest human material available and shaping it into an organization capable of carrying on the multifarious activities of municipal government with the very highest degree of efficiency. Regarded in this light, the merit system should aim not so much to combat the specific evils of the spoils system as to apply to the personnel problems of city government principles of scientific management in such a way as to build up an organization with motives, ideals, leadership, and *esprit de corps* that will cause it to bend its efforts toward the attainment of purposes entirely incompatible with the spoils system.

The scope of the merit ystem.—It is generally supposed that there are many positions in every city that cannot be brought within the scope of the merit system, and certain classes of positions—elected officers, heads of major departments or divisions and their deputies and confidential secretaries, members of executive boards—are commonly excluded from its operation. It will be admitted without argument that positions filled by popular election cannot very well be subjected to the restrictions of the merit system, but what ought to be emphasized is that

upon sound principle the elective method of choice should be applied only to positions of crucial importance and preferably not to positions of purely administrative character. Recognition of this "short ballot" principle would greatly extend the scope of the merit system in most cities, as there are very few municipal positions to which the elective method can be properly applied. To what extent the merit system should be applied to non-elective positions is a question that cannot be answered dogmatically. The tendency in the past has been to hold that it is only practicable to apply the merit system to inferior positions; but the increasing perfection of methods of examination has demonstrated the feasibility of applying the merit system to positions involving the highest responsibilities and the most exacting duties. Except for the members of the city council and perhaps judges and high executives, the merit system should be virtually coextensive with the personnel of the city government; but in actual practice no such ideal has been realized or is likely to be in the near future. Scores of positions in almost every city remain outside the province of the merit system, and even to such an extent in some cities that the value of the merit system is largely nullified.

Organization for personnel administration.—From the outset it has been clear that municipal civil service laws would require special machinery for their administration, but there has been little genuine conviction as to the structure of this machinery and its relation to the established governmental machinery. The New York law provides for a civil service commission in each municipality, subject to the supervision and control of the state civil service commission; the Massachusetts law provides only for a state civil service commission with authority

to administer the merit system in each of the cities of the state; the New Jersey law allows the voters of each municipality to elect to come under the operation of the state civil service law and the jurisdiction of the state civil service commission; in Ohio, cities having home rule charters set up their own civil service administration under charter provision, and the state civil service law prescribes the establishment of civil service commissions in all other cities but under the control and direction of the state civil service commission. In the great majority of cities throughout the Union which have adopted the merit system there is no question of state supervision and control, because the merit system is founded upon special statute or charter provision and there is no state civil service system or state authority.

But regardless of whether the administration of the merit system is reposed in state authorities directly, municipal authorities under state supervision and control, or municipal authorities independently, the administering agency is almost invariably a board, or so-called civil service commission. There are several reasons why the board form of organization has been preferred. For one thing, civil service reform came at the high tide of board administration in all branches of our government and consequently the board was readily accepted as the appropriate organization for personnel administration. A more forceful and seductive consideration was perhaps the possibility of bi-partizan representation on a board. An additional justification of the board was the belief that the quasi-legislative and quasi-judicial phases of personnel administration could not be safely confided to a single individual. It is seldom required that the members of a municipal civil service commission devote themselves

exclusively to the work of the commission, and as the work is largely routine the commission is provided with a full-time staff headed by a secretary who often acts also as the chief examiner. Not until recently has there been any disposition to find fault with the board form of organization *per se*, but only with the methods of selecting and controlling the members of such bodies. Many competent students of public personnel administration are now urging either the abandonment or the drastic modification of the board system, pointing out certain grave defects which must be corrected. In the first place, they contend that boards, because of their plural structure and political composition lack initiative in adopting progressive employment methods; in the second place, they say that the persons charged with personnel administration should have special training and experience to fit them for the work, and that it is impracticable to have a board made up of such persons; in the third place it is believed that the plural form of organization is subversive of responsibility and effective control. Many reforms are suggested. In a recently prepared charter-draft for the city of Minneapolis, Dr. A. R. Hatton has proposed to do away with the civil service commission entirely and substitute for it a department of personnel administration under a single head appointed by the city manager. A slightly less drastic reform was embodied in a report of the Committee on Civil Service of the Governmental Research Conference of the United States and Canada in June, 1922. The substance of this proposal was that the civil service commission of three should be retained for the deliberative phases of personnel administration but that the purely executive duties should be assigned exclusively to the chairman of the commission who should be a full-time

official appointed under and protected by the merit system, while the other two commissioners would serve on a part-time basis and would have coördinate authority with the chairman only in the formulation of rules and regulations and the hearing of appeals. These two proposals will serve to indicate somewhat the drift of opinion respecting civil service organization.

The selection and composition of the civil service commission is a matter of prime importance. The usual method of selection is appointment by the mayor (with or without the consent of the council) or election by the council. Appointment by the mayor alone has probably been the most satisfactory of the methods named because it clearly fixes responsibility. If, however, the mayor is a politician—and an elected mayor is always more or less a politician—his appointments of civil service commissioners will be more likely to reflect his political prepossessions than his desire for objective and scientific personnel administration. And if the confirmation of the council is required for the mayor's appointments to the civil service commission, political considerations are almost certain to predominate, because nominees politically unacceptable to the council cannot be confirmed. Election of members to the civil service commission by the city council has been favored only when the members of the council are elected by non-partizan ballot, as in the case of commission and commission-manager cities, but the system has not worked satisfactorily even then. One reason is that non-partizan elections do not necessarily produce non-partizan or non-politicial councils, and another is that the plural structure of the council tends to obscure responsibility for the character of the civil service commission. The proposal of the committee of the Governmental Research

Conference, alluded to in the preceding paragraph, is absolutely novel as respects the selection of the members of the civil service commission. It is proposed that the chairman shall be appointed in consequence of a competitive examination conducted by a board of examiners consisting of the city superintendent of schools, the probate judge (or local judge having probate functions), and a person selected by these two, who shall be either the chief examiner of the civil service commission or a person who has for two or more years been engaged as employment manager in a private enterprise having a working force of 500 or more. Of the two associate commissioners, one is to be chosen by the mayor or executive head of the government, to represent the point of view of the administration, and the other is to be chosen by the employees in the classified service of the city to represent the point of view of the rank and file. The obvious purpose of this scheme is to obtain a civil service commission that will be headed by an expert personnel executive with whom will be associated persons representing both management and employees.

Civil service laws frequently specify that not more than two of the three commissioners shall be adherents of the same political party. Such provisions have doubtless operated to prevent civil service commissions being packed with partizans of the same feather, but they have in no wise prevented partizan domination of civil service commissions. They have, in fact, constituted a direct invitation to the injection of partizanship into the choice of civil service commissioners because they make partizanship an essential qualification for membership, and independence a disqualification; and in consequence the commission invariably consists of two partizans of one stripe and one of the other.

Another puzzling difficulty has been the tenure of members of the civil service commission. If their terms are of identical duration and co-extensive with the term of the appointing authority, all places on the civil service commission will be vacated whenever there is a change of political control, and the commission will become a mere cog in the spoils system. If, on the contrary, their terms rotate, it frequently happens that holdover members of political faith opposed to the party in control of the government will constitute a majority of the commission and will devote themselves primarily to obstruction. Here again the interesting proposal of the committee of the Governmental Research Conference strikes out on a new path. It proposes that the chairman shall be a permanent appointee, holding office during good behavior, and that the associate commissioner appointed by the chief executive shall have a term co-extensive with that of the chief executive and that the associate commissioner elected by the employees should serve for three years but may be recalled by the employees at any time.

The application of the merit system.—The merit system as applied in American cities follows rather closely the method of the merit system as employed by the Federal Government. The municipal service is divided into two major classes, known as the classified service and the unclassified service. The latter includes all positions which for one reason or another are exempt from the operation of the merit system. The classified service embraces all positions which are subject to the restrictions of the merit system as to appointment, removal, and conditions of employment, and is in turn divided into three classes: competitive, non-competitive (sometimes erroneously termed "exempt"), and labor. In the classified service

all appointments must be made on the basis of merit and fitness for the position as demonstrated by tests applied by the civil service commission. In the competitive class the merit test takes the form of competitive examinations; in the non-competitive class are placed positions requiring exceptional educational experience or personal qualifications which render competitive examinations impracticable but for which it is feasible to establish standards of fitness with reference to which candidates may be rated; the labor class embraces those positions which require manual labor that can be performed without any particular skill, training, or experience and for which the qualifications can be established by very simple tests, usually of a physical character.

The location of the power of classification is a crucial matter in the operation of the merit system. Mistrusting all human authority, some civil service laws attempt to enumerate all of the positions or types of positions that are to be included in the unclassified service, and then declare that all other positions shall be in the classified service. The usual practice, however, is to include in the law only a partial enumeration of the unclassified positions, and to repose in the civil service commission large discretion in ordering positions into or out of the classified service. This clearly places the civil service commission in a position to vitiate the merit principle by putting into the unclassified service and beyond the reach of merit tests, positions which appropriately belong in the classified service. In this way civil service commissions composed of narrow partizans have done enormous harm to the merit system. Much the same thing can be said of the classification of positions within the classified service, which is a power that is also commonly confided to the

civil service commission. Since the rigor of competitive examinations is relaxed in the non-competitive and labor classes, a commission bent on opening the door to politicial favoritism will tend to disregard the proper bases of classification and place as many positions as possible in the two classes mentioned, where more latitude is allowed in the making of appointments.

Somewhat the same danger is encountered in the administration of the merit tests and the rules designed to effectuate the merit system. A civil service commission that is hostile to the merit principle is a grave menace to the fairness and impartiality of examinations and ratings, and will not be apt to make or enforce rules for the government of the classified service in such a way as to furnish adequate protection to the employees against political interference. And even though the civil service commission be not actively hostile to the merit system, it may be composed of persons lacking the qualifications to administer the tests and rules effectively and intelligently. It is therefore of incalculable importance in the application of the merit system to have a civil service commission that is not only free from political taint but composed of persons of large vision and ability.

The problem of examinations.—The first step in the application of the merit system to the individual employee is the test or examination by which his fitness for induction into the service of the city is determined. It has always been recognized that the same type of examination could not be used for all sorts of positions—that is the reason for the classification of positions as competitive, non-competitive, and labor—but the necessity for thoroughly scientific examinations designed to disclose the positive qualifications as well as the disqualifications of

the candidate as related to the particular position has received rather tardy recognition. Because of the early emphasis upon the extermination of the spoils system, the civil service examination was looked upon more as a convenient device for sifting out the spoilsmen than as a process for the accurate measurement of the candidate's inherent capabilities with reference to the position to which he sought appointment.

In case of examinations for positions in the competitive class some type of intellectual test is universal, and, where the nature of the position renders it indispensable, a physical examination is also required. The intellectual test usually consists of written examinations which demonstrate the candidate's literacy and disclose the nature of his knowledge of given subjects, but which unfortunately do not surely reveal those inherent traits of mind and character that are essential to the performance of the duties of the position he seeks. For instance the fact that a man can locate the Tropic of Capricorn, spell "conspiracy," name the official positions in the police department, add a long column of figures, or do any number of such intellectual feats, is no proof that he will make a good police officer; nor is inability to do such things conclusive proof that he will make an inefficient policeman. The relation between questions of this sort and the duties of the position is obviously too remote to have any significance. But the so-called practical question is often little better. Here is an example of a "practical" question put to police candidates: "What would you do if you found a man lying unconscious in the roadway and were certain that his unconsciousness was not due to intoxication?" The answer to such a question written in the quiet of the examination room would scarcely be taken as conclusive

evidence of the presence of mind the candidate would display in an emergency where there was little time for deliberation. The simple truth is that aside from physical considerations the necessary qualities of a good police officer include courage, presence of mind, self-control, attentiveness, memory, obedience, and personal integrity; and upon second thought we can readily perceive the impossibility of ascertaining the presence or absence of these qualities by the orthodox type of written examination.

In like manner the negative character of the ordinary physical examination becomes apparent if we think of the physical test in connection with the duties of the position. Reverting again, for illustration, to the examination of police candidates, it is clearly important that the candidate shall be free from physical defects and have no disqualifying diseases, but considerably more than that is necessary for efficient police service. Agility, endurance, strength, and other athletic qualities are quite as necessary as physical soundness, and these qualities the ordinary medical examination does not bring out.

In regard to positions in the non-competitive class there has been grave doubt as to whether any method of examination can be satisfactorily employed, and there is a disposition to rate candidates largely on the basis of education and experience. The dangers involved in this practice are obvious. The mere fact that a person has graduated from a good medical school with high honors and has had a creditable record as a medical practitioner cannot be regarded as conclusive evidence that he will make a good public health official. Previous experience as a public health officer, or a special course of training for public health work, would, of course, be the best basis of selection;

but few appointments could be made if candidates were obliged to possess such qualifications. The same condition exists in many other branches of municipal service. Recognizing, therefore, the inadequacy of training and experience as the sole basis for comparing candidates for non-competitive positions, civil service bodies often require supplementary tests that are intended to disclose the special fitness of the candidate for the position in question. Sometimes a thesis on subjects pertinent to the work of the position is demanded, and frequently an oral examination of the candidate is required in addition to this. Valuable as these expedients may be, it is still clear that they do not get at the imponderable qualities, such as judgment, poise, and executive ability, which are essential in responsible positions.

The examination problem for unskilled labor is somewhat less difficult. Little in the way of examination has even been required, except an unexacting physical test and perhaps some investigation of character and personal habits. These are necessary and desirable but they do not test the fundamental qualities that are essential to a good manual laborer, such as manual dexterity, coördination of eye and hand, intelligence in executing instructions, physical strength, and endurance.

Recognition of the shortcomings of civil service examination has spurred the more progressive civil service commissions and examiners to endeavor to develop tests of more scientific and practical character. Beginnings have been made in the use of intelligence tests in examining applicants for certain types of employment, and practical examinations consisting of actual performance of fixed tasks under the observation of examiners have been extensively tried; new ways of evaluating experience have

been worked out; and efforts have been made everywhere to formulate examinations in such a way that they will be better correlated with the duties of the positions for which they are used. But as has been said, these are scarcely more than beginnings. We seem to be just on the threshold of a new era in civil service examinations.

Training for municipal service.—If the vocations of private life could supply training and experience to qualify persons for all branches of municipal service, and if methods of recruiting and examining were so perfect as to draw into the service of the city a thoroughly qualified corps of public servants, there would be no need to discuss the problem of training for municipal service. But there are so many municipal positions that are without a parallel in private life, and systems of recruiting and examining candidates for public positions are so defective, that the city is inevitably faced with a problem of developing the raw material that comes into its service in the body of trained and efficient public servants. Very few cities have met this challenge in any way other than having the recruit learn the job by doing it with, perhaps, some casual supervision by a senior employee. Considering the costly mistakes made by the recruit, as well as his own inefficiency and the lowered efficiency of his fellow employees during the period of apprenticeship, this is a wasteful and ineffective method of training. Furthermore, it is inimical to progress because the new employee learns to do the job as it has always been done, which is not always the best way or even a good way.

Except for the few large cities which have established schools for training candidates for the police and fire departments, very little has been done to prepare municipal employees for their jobs in advance of their induction

into the service. A few private institutions have endeavored to meet the need by setting up courses of training for public service, but the official response to these movements has been so half-hearted that they have not accomplished much. Nor has there been any serious attempt to utilize the public school system as an agency for training public servants, although the close articulation of the city school system and the personnel department of the city government would seem to offer almost infinite possibilities. But if cities are deficient in the matter of training in advance, they are utterly derelict in providing opportunities for employees to prepare themselves for increased usefulness and advancement in the service. The ambitious employee faces stagnation and limited opportunity, or the alternative of depending entirely upon his own initiative and resourcefulness for the training necessary to advancement. It is no wonder that the easier and more expeditious methods of ingratiating himself with his superiors or resorting to political pressure are commonly preferred.

The problems of management.—The difficulties of personnel administration are by no means ended by the perfection of methods of recruiting, examining, and training municipal employees. In fact, every advance toward scientific control of the quality of the personnel at the time of induction into the service of the city intensifies the subsequent problems of employment management, because the elimination of the political placeholders and of the cohesive force of the patronage system results in many vexing difficulties in dealing with municipal employees that could not exist in an acute form under the spoils régime. The compensation of municipal employees, for instance, was hardly a problem at all under the spoils system, because everybody knew that rates of compensa-

tion were not fixed on a basis of equity, and every municipal employee contented himself with getting as large a compensation as his political influence could produce. But with a body of employees really selected in accordance with the merit principle, the question of a fair and just compensation for each position assumes major importance. Nothing so quickly undermines morale and impairs efficiency among employees of real merit as glaring inequities of compensation; whereas the political employee who regards his job as more or less of a sinecure is not likely to be very sensitive to such conditions. Much the same thing can be said of the matter of advancement and promotion. Political retainers in municipal service expect advancement or promotion on the basis of political influence and quite readily resign themselves to the autocracy of those who control the patronage, But the employee whose sole asset is fitness for the job, rightfully expects advancement or promotion on the basis of the quality of his service, and this attitude of mind creates a delicate and difficult problem of employment management. In regard to disciplinary measures the same situation is to be observed. Under a régime of political preferment the chief use of disciplinary measures was to punish political disloyalty or create vacancies to be filled by deserving henchmen. Under the merit system, however, disciplinary measures must be so safeguarded as to prevent their abuse and at the same time must be rendered effective as against the derelict employee. Obviously this is not an easy object to attain. The retirement of municipal employees is another problem that comes into prominence with the perfection of the merit system. Under the spoils system the question of retirement was not important. Employees were swept out of their jobs wholesale in the

event of changes of political control and when no such changes occurred aged or incapacitated employees were simply provided with sinecures. Such a condition of affairs is, of course, incompatible with the merit system, and hence the security of a fair and scientific plan of retirement must be offered to employees under that system. The foregoing summary will give some conception of the questions of management now occupying the minds of students of the public personnel problem.

The compensation of municipal employees.—The problem of compensation presents three main difficulties: (1) the establishment of rates of compensation that are inherently fair in consideration of the duties of the position, the conditions of employment, and the rates paid in private employment for the same or similar work; (2) the establishment of rates of compensation that are fair for each position as compared with other municipal positions; (3) establishment of a fair system of increasing the rates of compensation progressively with the length of service.

The first difficulty arises out of the haphazard, hit-or-miss way in which municipal authorities have set up rates of compensation. Without guiding principles or a plan of compensation embracing the whole municipal service, positions have been created and rates of compensation fixed or changed according to personal caprice or the political exigencies of the moment. The natural and unavoidable result has been in most cases either under-compensation or over-compensation. One employee doing routine bookkeeping might receive $900 a year, while another doing the same sort of work would receive $2,700 a year. In both cases there was injustice—injustice in the one case to the employee who was underpaid and injustice in the other case to the city which was paying too

much. If the proper rate of compensation for such work were $1,500 a year, one employee was underpaid by $600 and the other overpaid by $1,200; and when such conditions prevail in the municipal service, the city is bound to be the loser in the long run. It not only loses the amount of the overpayments but loses through the reduced efficiency of the underpaid employee whose zeal and loyalty cannot be maintained under such conditions; and furthermore it renders municipal service unattractive to persons of ability who are unwilling to submit to the compensation hazards of municipal employment. The problem, then, is to determine what is a fair and just rate of compensation for each position. Palpably this cannot be done without analyzing the duties of the position and basing the rate of compensation on the nature of the duties required; and all positions involving the same or substantially similar duties should be classed and considered together from the standpoint of compensation. It is amazing that such a simple principle has been so long ignored, but the fact is that only within the last decade has it received any recognition outside of academic circles. Under the somewhat formidable title of "standardization and classification of public employments" it is now gaining very wide acceptance. The basic idea is that by careful analysis of the duties of positions they can be standardized, that is, made uniform throughout the entire service and that all positions of like character can be brought together into classes and sub-classes for the purpose of fixing rates of compensation. It has been suggested, for instance, that municipal positions can be classified as follows: executive, professional, clerical, inspectional, educational, investigational, custodial, institutional, protectional, skilled trades, and labor. Within each of these classes

there are suggested various groups and grades. Each position is assigned to a grade, group and class in accordance with the character of the duties of the position; and the claim is that when the standardizing and classifying process is completed all positions of like character will stand together by grade, group and class. The determination of rates of compensation then becomes a matter of fixing basic rates, maxima and minima, for all standard groupings and working out a satisfactorily graduated scale of compensation between the extremes. In arriving at these basic rates many factors are taken into consideration, particularly the rates paid in private employment for the same or similar work, and the advantages or disadvantages of public as compared to private employment in the matter of working conditions.

The second difficulty is really of a piece with the first and requires only brief consideration. Inequities of compensation exist not only in cases where the work involved is of indentical or similar character but there are glaring disparities as between positions of dissimilar character. Instances have been found where elevator operators were being paid more than nurses, scrubwomen more than teachers, window cleaners more than junior engineers. Conditions of this sort breed discontent and discourage competent and highly trained persons from seeking public employment. The remedy is to be found in the standardization and classification of positions, as described above, and the establishment of basic rates of compensation in recognition of the justice of graduating rates of compensation according to the preparation, experience, and technique required by the position.

The third difficulty mentioned above involves the increase of compensation. When an employee moves from

one position to another with greater responsibilities or more exacting duties, that should be considered a promotion and should naturally carry with it an increase of compensation. Whether in such a case the increase of compensation is a proper one depends entirely upon the scale of rates fixed for the various grades and classes of positions. The real problem arises in the far more numerous cases where the employee remains for a considerable period in the same position without change of duties and responsibilities. It is generally agreed that it is unsound policy to offer an employee no hope of increased compensation unless he secures a promotion, and yet the usefulness of the employee who remains stationary will not so increase as to justify any sharp augmentation of his compensation. The way out of the difficulty lies in the evolution of a system of personnel administration that will facilitate the promotion of all who can qualify for promotion and will offer the incentive of reasonable increases of compensation to deserving employees who fail to qualify for promotion. The range of increase cannot be very great, but it should be sufficient to be worth striving for and should be spread over several years so as to furnish a continuous incentive to good service. The plan that has worked best is to establish the minimum and the maximum for each position according to its grade in the standard classification and then to determine the number of years an employee should normally serve in order to pass from the minimum to the maximum. The margin between the two extremes is then divided into a number of annual increments equal to the number of years so fixed, and if the employee's service record is creditable his compensation is augmented each year by the amount of such annual increment until he has reached the maximum. After

attaining the maximum further increase is not possible without promotion.

Promotions.—Ample opportunity for promotion and a system of making promotions that is grounded upon the merit principle are indispensable to good morale and efficient service. To afford ample opportunity for promotion the way should be open for an ambitious and capable person to rise from the lowest to the highest rank in the service, but unfortunately in most cities such a possibility does not exist. In the first place most of the higher positions, as well as many of the less important ones, are in the unclassified service or the non-competitive class of the classified service, and hence are very rarely filled by the promotion of employees from lower positions. In the second place, the municipal service is commonly so disorganized as respects the functional relationship of positions one to another that the path from the bottom to the top is beset with side-tracks and blind-alleys, and there are consequently no natural lines of promotion. An employee begins, say, in a minor bookkeeping position and rises to the highest accounting position in his office or possibly in his department; but thereafter the avenue of promotion is closed unless he can be transferred to another office or department in which there are accounting positions of higher rank. A proper standardization and classification of positions would obviate this difficulty and open up natural lines of advancement to each employee. The other difficulty in promotional procedure is the method by which employees are selected for promotion. It is admitted that fitness for the higher position should be the controlling consideration, and consequently some civil service commissions base their promotions almost wholly upon examinations similar to the examinations for ad-

mission to the service, though perhaps requiring a certain period of service in the lower post before the candidate is eligible to take the examination for promotion. Such scant recognition of seniority is deemed unfair by other authorities who recognize length of service as one of the crucial factors in making promotions. Other authorities insist that the character of the service of the employee in the lower ranks of service should be given large weight in determining fitness for promotion. Such a basis of promotion patently necessitates committing large discretion to the employee's superiors in judging the quality of his previous service, or the invention of a system of keeping for each employee a continuous service-record which will take into account all factors of efficiency. The latter alternative is a large problem in itself and has an important bearing upon other matters than promotion, and it will, therefore, be treated by itself in a subsequent paragraph. Ideal promotional practice is simply a matter of the proper combination of the factors above mentioned into a well-balanced and scientific scheme of making promotions.

Disciplinary measures.—Discipline is probably the weakest link in the chain of principles involved in the administration of the merit system. Extreme caution to protect employees in the classified service from political interference has quite commonly resulted in circumscribing disciplinary power to such a degree that effective discipline is impossible even in cases of gross inefficiency and serious dereliction of duty. The extremity of discipline is removal, and civil service laws in most cities impose restrictions upon the power of removal which render it a feeble, if not wholly impossible, weapon of discipline in the classified service. Sometimes a judicial trial

is necessary before an employee can be finally removed, and even when a perfectly good case can be made against the employee the delays and technicalities of judicial procedure are so discouraging that most executives will attempt removal only in the most extreme cases where shocking moral lapses occur. The more common requirement is a hearing before the civil service commission before removal can be made effective. This involves much the same difficulties as a judicial hearing, as well as some peculiar difficulties of its own. A civil service commission of partizan composition is likely to use the power for political purposes, while a strictly non-partizan commission is likely to be overzealous in protecting employees against removal. The more liberal civil service laws permit removal upon the filing of written charges against the employee with an opportunity for him to reply. This facilitates removals except in cases where the principal charge is inefficiency. The elements of inefficiency are often so intangible that specific charges are difficult to make, and many executives rather than endure the political repercussions of removal under such circumstances will tolerate the inefficient employee. A new element is now being projected into the problem by the demand of organized groups of public employees that they shall have a voice in the decision of questions of discipline, especially removal. The prudence of this is now being earnestly debated and many experiments are being tried. Despite the manifest democracy of such a plan, it must be admitted that it is not without grave dangers.

Discipline falling short of removal may take several forms. Suspension is perhaps the commonest type of discipline. Under most civil service laws suspension always precedes removal, as the superior officer has only

power to suspend pending a hearing on the question of removal. But suspension may be used as a form of punishment both by the civil service commission or by the superior officer. As used by the civil service commission it is usually an alternative to removal and may be quite extensive. Superior officers are also frequently given power to suspend for short periods. During suspension the employee usually receives no compensation. Other common methods of discipline are fine and demotion. The extent to which superior officers have authority to impose such punishments varies considerably, but is commonly subject to certain restrictions. Curtailment of privileges and disqualifications for promotion or increases of compensation are other methods of discipline, which can be quite effectively used in conjunction with an adequate system of efficiency records and ratings. Indeed it may be said that all forms of disciplinary action can be more intelligently applied with the aid of a proper service record.

Discipline, in sum, involves a delicate balance between unrestricted executive authority and impregnable safeguards for employees. Both extremes are dangerous, the latter quite as much as the former. Perhaps the chief hope for betterment lies in the fact that the extension of the merit system to the higher positions in the service will make the former less dangerous and the latter less necessary.

Efficiency records and ratings.—Reference has been made several times to the utility of service records by means of which the efficiency of employees may be evaluated and rated. As a means of determining the fitness or unfitness of employees to receive the regular salary increase, as a means of disclosing the qualifications of candidates for promotion, as a guide in the administration of

discipline, and as a method of checking up the practical efficiency of examining methods, such a system of service records, if objectively and scientifically operated, is invaluable. Although it cannot be said that civil service commissions have advanced far beyond the initial stages in devising systems of recording and rating efficiency, certain common principles are usually followed. An attempt is made to analyze the factors that enter into individual efficiency and to apply some scheme of measurement to each of these factors. The civil service commission of the city of New York is said to have the best system now in use. This system recognizes three positive and two negative factors in efficiency: (1) quantity of work, (2) quality of work, (3) personality, (4) unexcused lateness and absence, and (5) misconduct. The first three are taken as the basis for rating, and certain weight on a percentage basis is given to each. The highest weights that may be assigned to the three factors are 44 per cent for quantity, 44 per cent for quality, and 12 per cent. for personality; the weights given for "normal" performance are: 35 per cent. for quantity, 35 per cent. for quality, and 10 per cent. for personality; below these figures any weights may be given to represent the degree of inferiority In arriving at the exact percentage to be given for each of the factors, within the limits named, a great many elements are taken into consideration in an effort properly to evaluate efficiency of each employee. The sum of the percentages assigned to each factor represents the employee's efficiency rating, provided there are no deductions on account of the two negative factors. A deduction of not less than 1 per cent. and not more than 10 per cent. may be made for each specific act of misconduct, the maximum being left to the discretion of the department.

Such a system of rating employees must be administered in such a way as to stop all charges of prejudice or partiality. The civil service commission should of course be responsible for the proper installation and administration of the system, but the actual ratings have to be made in each organization unit by the superior officer directly in charge of the working force. This officer should be directly responsible to the civil service commission or its agents in the performance of this work, and his work should be checked by frequent inspections by agents of the commission. Ratings should be made three or four times during the year, so that improvements may have a chance to appear in the record; and adequate machinery should be provided for review and appeal. Moreover, the ratings must be open to inspection so that each employee may have an opportunity to investigate his own rating as fully as he desires.

The retirement of municipal employees.—The public has long been acquainted with the problem of retirement as respects policemen, firemen, and teachers; because the need for a retirement policy has been more apparent in regard to these employees and because the employees themselves have taken the initiative in forcing it upon public attention. Gradually, however, we are coming to recognize the desirability of a comprehensive program of retirement for all municipal employees. It is apparent that the efficiency and economy demanded of government in these arduous times cannot be attained unless some way exists to purge the public service of employees who have passed the peak of efficiency through age or incapacitation. Persons who have given long and efficient service to the city cannot be abruptly dismissed when they have passed the zenith of usefulness; that would be fatal to *esprit de*

corps as well as an act of supreme ingratitude. The only fair and economical method of treatment is systematic retirement on pension.

A great many difficult problems arise in connection with municipal pension systems. From the financial standpoint there is the question of devising a satisfactory system of accumulating a fund from which to make pension payments. The pension fund may be made up entirely by contributions from the city treasury or entirely by the contributions of the employees or by joint contributions of the city and the employees. The last named plan is the one most commonly adopted, although there is no uniform rule as to the proportion to be borne by each. Then there is the further problem of administering the pension funds on an actuarially sound reserve basis so that the funds will be adequate at all times to meet the demands upon them. Failure to take this precaution has been the cause of much disappointment and distress in many cities. Another question that must be carefully studied and intelligently answered is, "What should constitute the basis for retirement both on account of superannuation and disability for each and every employment included within the scope of the pension system?" Still another difficult problem is the determination of the amount of the pension to be paid in each case. The question of the basis of retirement goes to the very vitals of the pension system, for if it is such that employees are retired while they are still capable of valuable and effective service, the primary purpose of the pension system is defeated; but, if on the contrary, the basis of retirement is too exacting, the employees suffer an injustice and the city suffers financially by retaining them in active service on full pay after they are incapable of rendering efficient

service. The question of the rate of pension is important because of its direct bearing upon the actuarial soundness of the pension funds, and because also of its bearing upon the contentment of the employees and their willingness to coöperate with the city in accumulating the pension funds.

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CHAPTER VI

THE POLITICAL DISINTEGRATION OF AMERICAN CITIES

We ordinarily conceive of a city as being a metropolitan community consisting of all the people who inhabit the urban area surrounding a certain nucleus of industrial, commercial, and social activity. But in a strict legal sense a city is a municipal corporation, and a municipal corporation is a political entity whose geographical boundaries are fixed by law and not by the social and economic facts of life. From the standpoint of government, therefore, a city is an urban area that is governed as a single municipal corporation; but from the standpoint of physical reality a city is an urban area that is an organic social and economic unit. There is no reason in theory and principle why the boundaries of one municipal corporation could not and should not embrace the whole metropolitan community; but in the United States that is very rarely the case.

Cities that are not cities.—We have scores of large metropolitan centers with no semblance of governmental unity. What is a city from the legal standpoint is but the torso of a city from the social and economic standpoint; and what is a city from the social and economic standpoint is a collection of contiguous cities from the legal standpoint. In fact the situation is not often as simple as that; for in addition to one large municipality and several suburban

municipalities, the governmental system in most large urban communities is complicated by one or more county governments, and often by numerous special governmental agencies like park districts, port districts, or sanitary districts. These conditions have come about because of the failure of political institutions to keep pace with social and economic developments. A community is organized as a municipal corporation and its boundaries are established by law. In a short time population overflows these boundaries; commerce and industry ignore them entirely. The logical thing would be to extend the boundaries of the municipal corporation to keep up with the growth of population. But various legal and political obstacles make that exceedingly difficult and often impossible. The people who live beyond the boundaries of the municipality, confronted by the numerous problems of urban life, must have the benefit of municipal government; and it is easier and sometimes preferable to organize them as separate municipal corporations. As these multiply with the growth of population, the urban area becomes a cluster of separate, distinct, and independently governed municipalities. And, then, when the contiguity of these municipalities and the essential social and economic unity of the entire metropolitan community make it necessary to have certain functions of government administered by one authority throughout the entire metropolitan area, the easy thing to do is to create special municipal corporations for such purposes, as park districts, port districts, sanitary districts, and the like. And when the metropolitan area becomes so large that it spreads over several counties, or becomes so preponderant in one county that county government is in large measure converted into city government, it is easier to allow the duplication to continue than

to simplify the system by consolidating city and county governments.

Examples of dismembered cities.—It is hard to realize what preposterous governmental organization most of our great metropolitan centers have unless we deal with concrete examples. Chicago furnishes a splendid illustration of conditions that are quite typical.

> Functioning within the city of Chicago there are thirty-eight distinct local governments, and in Cook County as a whole, which includes the major portion of the metropolitan area, there are three hundred and ninety-two. Besides the city government of Chicago and the government of Cook County there are the Sanitary District, towns, villages, school districts, park districts, forest preserve districts, library districts, in endless and unspeakable confusion. Take the case of the towns, for example. There are thirty-eight towns in Cook County; eight are entirely within the city of Chicago; six others lie partly within and partly without the city; ten are entirely within the sanitary district; nine are partly within and partly without the sanitary district; and eleven are entirely without the sanitary district. Or take the case of incorporated municipalities. There are seventy-eight incorporated municipalities in Cook County in addition to Chicago, and of these forty-six are within the sanitary district and the remainder without. And so it is with park districts, school districts, drainage districts, and the like.[1]

Boston affords another good example. The last Federal census gives Boston a population of 748,060 and ranks it as the seventh city. But Boston in reality is the heart of a great metropolitan center of more than 1,500,000 inhabitants. Within this vast metropolitan community at the present time there are fourteen cities, twenty-six

[1]C. C. Maxey, "The Political Integration of Metropolitan Communities," *National Municipal Review*, August, 1922.

towns, five counties, and five state boards with local government functions.

Los Angeles is another case of the same sort. This city and its environs south of the Sierra Madre Mountains constitute a metropolitan district which is substantially unified on all matters save government. In governmental affairs it is divided into thirty-eight municipalities, one hundred and eighty-seven school districts, thirty-four lighting districts, thirty-three road districts, three water-works districts, two protection districts, and one county. The aggregate population is about 800,000 of which nearly three-fourths is Los Angeles proper.

Such examples could be multiplied almost indefinitely. In the same category should be placed Cincinnati, Cleveland, Detroit, Buffalo, Indianapolis, Milwaukee, Newark, Jersey City, Kansas City, Seattle, Oakland, Portland, and many other cities.

The cost of political dismemberment.—Political disunity is one of the most serious problems that any metropolitan community can face. For an urban area, which for all practical purposes is one community, to be broken up into a number of detached, discordant, and often conflicting political entities is of course enormously expensive in a material way. But the material cost of political disintegration is trivial compared to the other losses it entails. The great problems of urban life are not divisible. The problem of traffic and transportation in an urban community is one problem; and when it must be dealt with through several distinct and ill-coördinated political agencies, it generally remains unsolved. The same is true of such problems as public health and sanitation, recreation, public safety, community planning. These, like all great urban problems grow out of the fact of the

community as a whole. It is a great mistake for dwellers in outlying municipalities to suppose that they have no responsibility for the problems of the central municipality, and therefore need not be concerned about them. The residents of the suburbs, in so far as they participate in the industrial, commercial, and professional life of the municipality, are a part of it. The owner of a store or factory in the downtown section may live miles away from his business in a remote suburb, but his store or factory draws into the city hundreds, if not thousands, of persons either as customers or employees. How, then, can it be said that such a person is in no way responsible for the congestion and conglomeration of city population which give rise to such huge problems as housing, transportation, sanitation, and city planning? He is in fact one of the chief contributors to these conditions. It is the same with persons who practise law, medicine, dentistry, or any other profession in the central city, and thus force people to come to the city to work for them and to be served by them. Whether they live in the city or not, they cannot escape their share of responsibility for the crowds and the crowding of the city. In fact every person who works in the central city, has his business there, or goes there on business, professional, or social errands is a part of that great human aggregate and contributes to that massing of population, which is the fundamental cause of all urban problems. He could hardly be much more a part of it by sleeping there and spending his Sundays there. The only way the suburbanite can escape responsibility for conditions in the central municipality is by retiring to his snug suburb and remaining entirely away from the city. On the other hand, it is equally absurd to attempt to absolve the resident of the central city from responsibility for the problems

of the suburbs. It is a well-known fact that every municipality that is a satellite of a greater center of population has problems of far graver import than isolated municipalities of the same size. Because it lies at the circumference of a huge center of population, such a municipality has to cope with difficulties of police protection, water-supply, sewage and sanitation, disease-control and the like, which largely originate in or because of the greater central municipality. The character of the social and economic life of the city and the character of the government of the city very vitally affect the conditions which the suburbs must confront. For the simple fact is that the city and the suburbs are in reality one community, and no amount of political casuistry can alter that fact.

Community problems call for community action, and when community action is rendered impossible by political disintegration it is a great calamity to the whole community. Rivalry and competition take the place of coöperation; local interest precedes community interest; obstruction and delay prevail over vigorous and expeditious action; temporizing and blundering preclude vision and statesmanship. Worst of all, perhaps, is the loss of leadership suffered by the whole community. People who are natural and logical leaders in the social and economic life of the community are disqualified by residing in the suburbs, for participation in the political affairs of the central city. They may of course take part in the political affairs of the suburbs, but as a rule the political affairs of the suburbs are too insignificant to challenge the interest of many of the bigger men of the community. Thus both the suburbs and the central city are deprived of the services and leadership of persons whom they could readily enlist if they were politically united as one municipal corporation.

From a financial standpoint political disintegration in a metropolitan community is equally disastrous. In the first place the full financial resources of the community are not available for community purposes. Public revenues in most communities are derived in the main from taxes on real and personal property in proportion to value. Consequently property values in each of the political entities making up the metropolitan district constitute the basis of its public financial resources. But those property values are the creation of the community as a whole, and but for the existence of the community as one social and economic organism, such property values either would not exist at all, or at least would be much reduced. The suburbs in the long run suffer more than the central municipality by reason of the division of financial resources among the component municipalities of the metropolitan area. Naturally the most valuable property in the whole metropolitan community is to be found in the central city, especially when it is devoted to business and industrial uses. Because of its great value, such property will stand high rates of taxation and yield enormous revenues. For a period of years it may require all of this revenue to make the necessary public improvements and meet the governmental costs of the central city. But there eventually comes a time, if the boundaries of the central city are not extended too rapidly, when most of the needed improvements have been made and the improvement problem has become one of maintenance, repairs, and replacements, which normally do not call for such large expenditures as the original improvements called for. Also there eventually comes a time when the growth of population in the central city becomes almost stationary, and consequently the need for the expansion

of governmental services becomes less urgent. But at the same time the value of property in the central city will go on increasing by leaps and bounds as long as the growth of the suburbs continues. So the central municipality tends to reach a condition in which the value of property increases much more rapidly than the cost of public improvements and municipal administration. But this is never true of the suburbs. Because of the greater rapidity of their growth they are confronted by an almost insatiable demand for additional public improvements and extended municipal services; and because the property which must constitute the basis of taxation in the suburbs is chiefly of a residential character it does not have the high unit values and therefore will not produce public revenues in the same proportion as property in the central city And if the growth of the suburbs continues unchecked, there is in normal times bound to come a time when the rate of increase in property values will lag far behind the demand for extended public improvements and municipal services. This necessitates a progressive augmentation of tax rates in the suburbs until they become entirely disproportionate in comparison with the tax rates of the central city. The suburbs then face a serious dilemma. If they grow, there is no way to check the rising cost of government and public improvements, and neither is there any way to increase property values correspondingly, and so give them the needed revenues. But in the central city are enormous and swiftly growing property values, which are the creation in large part of the suburbs, and which could not exist but for the existence and growth of the suburbs; and yet the suburban municipalities may not lay hands on these values for revenue purposes. It is not surprising, then, that the people of

the suburbs gradually come to wonder if their political independence is worth what is costs. It was such a state of affairs more than anything else that brought about the union of New York and Brooklyn and other suburban municipalities to form Greater New York. New York was built up; her property values were soaring skyward with incredible rapidity; and her tax rate was stable and relatively low. Just the contrary was the condition of most of the suburbs and Brooklyn, in particular, was on the verge of bankruptcy. Consolidation with New York saved them from financial ruin.

Political disintegration affects the pocket-book of the urban dweller in other ways than taxation. If he uses the street-cars, lack of uniform franchise provisions often results in diversity of fares and inadequate service. If he drives an automobile, his operating cost is increased and his depreciation accelerated by defectively improved streets and improperly articulated thoroughfares, resulting from the plurality of political functionaries responsible for these things. The costs of garbage collection and disposal, sewer construction, and sewage disposal are often greatly enhanced because several municipalities are trying to occupy the field and do the work independently. The extensive and uncertain fluctuation of real estate values, which often results in heavy losses to individuals in metropolitan communities, is very largely accounted for by the uncoördinated development of the various sections of the metropolitan area, which is mainly due to its political dismemberment.

Finally political dismemberment in a metropolitan community prevents comprehensive city planning on the part of both the suburbs and the central city, with a resulting cost both in money and in sacrificed human happiness

and comfort that is beyond calculation. As we come to perceive more clearly the indispensability of community planning not only for the present but for the future, we shall be unable to escape the conclusion that political dismemberment is one of the most terribly expensive luxuries a metropolitan area can indulge.

The consolidation of local governments.—There are a number of places where steps have been taken to correct the evils of disunified local government by a more or less complete consolidation of the governmental agencies coexisting in the metropolitan area. The earliest case was the consolidation of the city and county government at Baltimore in 1851. What actually took place was the detachment of the city of Baltimore from the county of the same name, and the establishment within the boundaries of the city of a combined city and county government. The first notable case of consolidation occurred in 1854, when the thirty independent local governments in Philadelphia county were merged into one government. Owing to certain technical defects in the act of consolidation, the county of Philadelphia has since been given a semi-independent position; but the Philadelphia consolidation still stands out as the first sweeping unification of local governments to take place in this country. The consolidation of the city and county of San Francisco in 1856 is the next case on record. Following this came a somewhat similar case of consolidation of city and county governments at St. Louis in 1876. The next instance of consolidation, and probably the more famous one, was the formation of Greater New York in 1898 by the union of New York, Brooklyn, Richmond County, and portions of the counties of Kings, Queens, and Westchester. Altogether some forty independent units of local govern-

ment were replaced by a single municipal corporation. The chief shortcoming of the New York consolidation was its failure to include the five counties that exist within the boundaries of the greater city. In 1902 the people of Colorado adopted a constitutional amendment providing for municipal home rule, and incidentally for the separation of the city of Denver from the county of Arapahoe, and the establishment of a consolidated city and county government for Denver. Because of extended litigation over the validity of this provision the consolidation did not become finally effective until 1911. The forcible absorption of the city of Allegheny by the city of Pittsburgh in 1906, by means of a special enabling act passed by the state legislature, furnished the next case of local consolidation. Besides Allegheny five smaller municipalities were brought in at the same time. This consolidation did not, however, affect the county government. Perhaps the most recent instance of local consolidation was the union of eight suburban municipalities with the city of Wheeling, West Virginia, in 1920.

There are of course numerous instances of the annexation of one or more suburbs at a time by a central municipality, but the foregoing are believed to include all cases of comprehensive local unification. Several attempts to bring about such consolidation have in recent years been defeated. One of the conspicuous cases was the rejection at an election on November 15, 1921, of a proposed charter for the consolidation of Alameda County, California, and all of its component municipalities as one government. Another was the defeat in 1922 of the proposed constitution of the state of Illinois, which contained provisions that would have opened the way for the consolidation of local governments in Chicago and Cook County.

The problems of consolidation.—The foregoing résumé of the history of metropolitan consolidation has made no mention of the difficulties of bringing about such reform. But for the tremendous obstacles involved, there would probably be many more instances of extensive consolidation of local governments. The failures outnumber many times the successful consolidation efforts. The obstacles to consolidation are of two general kinds: first, legal difficulties; and second, political difficulties. The legal difficulties are the more serious, and are the source of many of the political difficulties. The legal difficulties in the way of city and county consolidation arise generally from two causes: first, the fact that the form of county government and sometimes certain county offices are specifically created by provision in the state constitution, and may not, therefore, be altered or abolished without a constitutional amendment. The second legal difficulty in city and county consolidation arises from the fact that ordinarily no city or county has legal power to take the initiative in inaugurating a movement for consolidation and to carry such a movement through to a legally proper conclusion. Consequently it is generally necessary to obtain an enabling act of some sort from the state legislature. The legal difficulties arising in the annexation of suburban municipalities commonly arise from the fact that there is either no adequate body of permissive law on the subject or that such law as there is is unsuited to the particular situation. Moreover, laws providing for municipal annexation are in general more likely to obstruct annexation than to facilitate it, both on account of the difficulty of getting the question raised and acted upon under the law, and the numerous technical legal requirements that must be satisfied before annexation can be valid. Another

legal difficulty that often arises in cases of annexation or city and county consolidation is that such unification is practically, if not legally, impossible without fundamental and sweeping changes in the charter of the city or cities involved, and such changes naturally involved many complex legal questions. But whatever the nature of the legal problems involved in consolidation, the fact remains that they are so fundamental and important that no comprehensive unification of local governments has even been accomplished without legislation and often constitutional amendments to remove the legal obstacles.

The legal difficulties of consolidation are responsible for the political difficulties to the extent that they necessitate political action in order to bring about local unification. However, the primary political difficulties are those which result from the hostility of the numerous suburban dwellers who honestly and sincerely oppose the incorporation of the suburbs with the larger municipality as a bad thing, and those which arise from the opposition of certain selfish political and business interests which profit by the chaotic conditions incident to the political dismemberment of a metropolitan community. The honest opponents of local unification can be dealt with only by reason and education; the dishonest opponents can usually be silenced by the proper kind of publicity.

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MUNICIPAL FUNCTIONS

MUNICIPAL FUNCTIONS

CHAPTER VII

THE ADMINISTRATION OF JUSTICE

Chief Justice Taft in an address before the American Political Science Association in 1914 said: "The greatest question before the American people is the administration of justice, civil and criminal, both in the matter of its prompt despatch and the cheapening of its use." Coming from Mr. Taft, who is one of our most eminent and thoughtful conservatives and who has had a more practical and varied experience in public life than any other living American, this declaration cannot be discounted as the hyperbolizing of an alarmist or professional reformer. If Mr. Taft was moved to make such a dogmatic assertion as to what seemed to him the paramount problem before the American people, he must have had in mind a most vivid picture, evoked by profoundly convincing experiences, of the long train of social ills, economic disorders, and political disturbances that inevitably flow from the maladministration of justice. It is, of course, axiomatic that the administration of justice between man and man and between man and society is the primary object for which government exists; and all human relationships, in civilized society, are necessarily vitally affected by the success or failure of government in the performance of this function. The security and

stability of our social and economic institutions are predicated upon the effective administration of justice according to contemporary standards, and chronic failure in the administration of justice is about the most dangerous disease with which the body politic may be afflicted.

The city and the administration of justice.—The administration of justice is not ordinarily considered a city problem, and is not usually discussed in books on city government. It will be perceived upon mature reflection, however, that the problem of administering justice is very largely a city problem, and that if we were not a nation of cities with more than half of our population living under urban conditions, it is quite unlikely that we should have such a problem at all. Our substantive law and our machinery for the administration of justice were established when this country was dominantly rural in character. They were quite adequate at the time, but obviously were not designed for the complex urban civilization of to-day. And the fact that we are stupidly trying to administer justice in modern urban communities with an Eighteenth Century system of jurisprudence and judicial administration is undoubtedly the chief cause of the grave difficulties that now beset us.

It is perfectly apparent that the principal strain upon our judicial institutions is in the cities; and were it not for the crushing burden thrown upon our law-enforcing machinery by the conditions of modern city life it is probable that there would be no serious failures or maladjustments in its operation. The multiplicity and complexity of the civil litigation that arises out of the diverse and complicated commercial and industrial structure of the city is inconceivable under a rural economy; and likewise the crime problem that is engendered by the peculiar

social and economic conditions of city life is of greater magnitude and perplexity than anything that could be foreseen at the time our judicial machinery was set up. It is owing to these facts that the problem of administering justice in the United States at the present time is primarily a problem of adapting primitive judicial institutions to meet the conditions of modern city life.

The nature of the problem of administration of justice.—Fundamentally the problem of administering justice has two aspects: (1) the question of the inherent soundness or unsoundness, from the standpoint of public policy, of the legal rights and obligations which it is the business of government to protect and enforce; and (2) the question of the efficiency of the processes and agencies by which such rights and obligations are to be effectuated. The first of these questions, involving as it does considerations of sociology, ethics, morality, and public policy in general is too broad to be included within the scope of this discussion. It may be true, as often claimed, that if the defects of the substantive law creating rights and obligations could be eliminated, the difficulties of enforcement would largely disappear. That ideal condition is, however, so elusive as to be virtually unattainable. Admitting that there is to some degree a causal relationship between the enforceability of law and its innate characteristics, and that many laws are inherently unenforceable, it is impossible to know how far this is true, and to proceed intelligently in correcting the defects that tend to render law *ipso facto* unenforceable, unless the law-enforcing machinery functions with the highest efficiency of which it is capable. From the pragmatic standpoint, therefore, the immediately pressing phase of the problem of the administration of justice is the second one—how to secure the

just and efficient enforcement of the existing body of law, imperfect though it may be.

There are two great classes of law and correspondingly two major types of procedure in the enforcement of law—criminal and civil. The criminal law has to do with the definition and punishment of offenses against society as personified by the state, and all other law is included within the category of civil law. In the administration of the criminal law it is the business of the state to apprehend and prosecute the offender, afford him the means of an impartial trial, and in the event of conviction administer the punishment prescribed by law. In the administration of the civil law the business of the state primarily is to furnish the means by which private individuals may redress their own wrongs expeditiously, economically, and effectively. Systems of courts and judicial procedure are necessary in both instances; and in the administration of criminal justice agencies for arresting and convicting the offender are an additional requirement. The subject of municipal police administration is treated in a later chapter; in the present chapter attention will be concentrated upon the prosecuting system, the court system, and judicial procedure as they function in American cities.

Machinery for the administration of justice.—Very few American cities have a unified system of local government, but have the administration of their local affairs divided among a number of distinct and disrelated local political entities, as the county, the city, the school district, etc. A similar condition of disorganization and disunity is to be found among the agencies for the administration of justice, the average American city being blessed with a confused jumble of judicial machinery that almost defies understanding. This condition can

only be explained by a knowledge of the way our machinery for the administration of justice in urban communities has grown up. The details of the story differ from city to city, but the basic facts are almost everywhere the same. The fundamental machinery was set up before the modern city came into being, and hence was of very primitive character. The county, or a district embracing several counties, was taken as the primary unit for the administration of justice. Within this area there was usually provided a court of unlimited original jurisdiction, known by such varying titles as common pleas court, county court, superior court, circuit court. The judge or judges composing this court had jurisdiction to try cases throughout the entire county or judicial district, and often traveled from place to place holding court, no distinction whatever being made between the cities and the rural districts. For the trial of minor civil and criminal cases petty tribunals were provided, the usual method being to have in each county or township a large number of justices of the peace each having jurisdiction co-extensive with the boundaries of the county or township. Occasionally there were special courts for probate work, or the administration of equity, or other purposes. Various officers and agencies auxiliary to the courts were also established, but without any organic relation to the courts. Of these the most important were the sheriff, the coroner, the prosecuting attorney, the county clerk, and the constables. In colonial times these officers as well as the judges were generally appointed by the governor of the colony, and hence were coördinated by their common responsibility to the same central authority. But with the reaction against executive authority incident to the American Revolution and the subsequent democratic movement of

the Jacksonian period, popular election became the almost universal method of selecting both judicial and administrative officers; and consequently the agencies mentioned became completely disunified and uncoördinated, and responsible severally to the electorate of the county or district.

For simple conditions this was not such a bad system of judicial machinery, despite the disruptive effect of popular election. Perhaps it is owing to this fact, as well as to conservatism and inertia, that we have been so slow in perceiving the necessity for fundamental judicial reform in urban communities. At any rate the radically altered judicial problem resulting from the massing of population in cities has not been met by basic reform and reconstruction, but by tinkering repairs and elaborations of the existing system. By multiplying judges and justices of the peace, by creating new and specialized courts independent of pre-existing courts, by increasing the technicality of rules of procedure, by extending and increasing the number of the auxiliary agencies of the courts, in fact by almost every imaginable process of dispersion and complication, we have built up in our cities a system of judicature so chaotic as to be almost unintelligible. As one passes a critical eye upon the details of this fearfully ill-formed structure, he is struck with wonder, not that it breaks down, but that it functions at all.

The sheriff and the police.—In the enforcement of criminal law the first essential is the arrest of the offender, so that he may be subjected to the operation of prescribed judicial processes. In practically every large city there is actually or potentially a conflict of authority and responsibility with reference to the arrest and detention of criminals. The general police officer in every county

(and in all cities included within the county) is the sheriff. Whether freely exercised or not, the historic police powers of the sheriff survive unless they have been expressly curtailed by statute; and this often leads to serious jurisdictional conflicts between the sheriff of the county and the police departments of the cities within his bailiwick. The sheriff is elected by the voters of the county, and although the city may be practically co-terminous with the county and have substantially the same electorate, the sheriff is entirely independent of the city government. This division of authority between the sheriff and the city police department not infrequently results in the partial or total paralysis of both. The opinion of modern students of the subject is that in a great metropolitan district the office of sheriff is an anachronism, which, with a properly unified system of local government, could be entirely eliminated. Even the functions that the sheriff performs as the ministerial officer of the courts (serving process, empanelling juries, executing judgments, etc.) could, under a single system of city and county government, be performed by the city police.

The prosecuting system.—Inasmuch as the state must take the initiative and act as plaintiff in the administration of criminal justice, it is necessary to have agencies to investigate crimes, formulate the charges against the accused, and conduct the case of the state in court. The agencies commonly employed in the performance of these functions are the coroner, the grand jury, and the public prosecutor.

The office of coroner has become so archaic that it has become a universal object of ridicule; but despite this fact it survives to obstruct the administration of justice in all but two or three urban communities in the United States.

The coroner is a county officer, elected by the people of the county, and independent of the city government or any other county officer. The one surviving function of the coroner is that of investigating deaths that occur under unusual, suspicious, or mysterious circumstances. This inquest is conducted by means of a jury empanelled by the coroner, which hears the testimony presented by the coroner and renders a verdict specifying whether the death resulted from natural causes, accident, suicide, or homicide, and in the event last named possibly specifying the person or persons responsible for the death, if known. The procedure of the coroner's inquest is usually amateurish, loose, and irresponsible. The coroner is not generally a physician and when he is, he is seldom an ornament to his profession. He is an elected official (and hence a politician), who has no responsibility whatever for carrying criminal prosecutions through to a conclusion. The coroner's jury consists of persons summoned by him to serve on inquests, and in urban communities they are commonly political retainers of the coroner who are keen to receive the small fee paid for such service. The records of the coroner's office are generally so fragmentary and unreliable as to be of little use in criminal prosecutions. The fact is that the office of coroner is more of a hindrance than a help to the administration of criminal justice, and ought to be abolished. In Boston and New York this has been done, and the office of medical examiner created to conduct inquests on bodies where death by foul means is suspected. Since the responsibility for inaugurating proceedings against criminal offenders is vested in the prosecuting attorney, it would seem logical and appropriate that the function of medical investigation should be under his direction; but this has not been done.

Another phase of the investigation preliminary to the commencement of criminal proceedings against an accused person is the preliminary hearing after arrest to ascertain whether there is reasonable ground for holding the accused for further investigation which may lead to indictment and trial. This hearing is generally conducted before a police magistrate or a justice of the peace, and often the prosecuting attorney takes no part in the proceedings. Extended comment is not necessary to show the utter botchery of such a scheme. The presiding magistrate or justice is generally an elected officer, and frequently not even a trained lawyer. In connection with the Cleveland survey of the administration of justice in 1920 it was disclosed that the coöperation between the agencies responsible for preliminary examinations and county prosecutor was so slight that the latter often never heard of the cases in which he was to proceed until they were sent to the grand jury. The possibilities of bungling in such a situation are matched only by the possibilities of corruption.

In the last analysis the effectiveness of the system of prosecution depends upon the public prosecutor, who in most states is an elected county or district official. In a few states the prosecutor may institute criminal proceedings by a process known as the presentation of information but generally he has to proceed by procuring an indictment by a grand jury. The grand jury is a venerable institution of Anglo-Saxon jurisprudence which grew up in the days when it was necessary to protect accused persons against royal tyranny. That time has gone, but the grand jury survives, though in the judgment of many thoughtful persons it is an obstruction to the administration of justice, particularly in metropolitan districts. It is not only the low quality of the personnel of grand juries, but also

the defectiveness of their procedure that renders them ineffective and often obstructive instruments in the administration of justice. The following quotation from the Cleveland Foundation Survey of the Administration of Justice admirably summarizes the present status of the grand jury:

> Generally the grand jury does little more than rubber-stamp the opinion of the prosecutor. It is almost exclusively dependent upon him for its knowledge of the law, and for his information on the facts it is almost entirely dependent upon his zeal and willingness. There will always be instances in which the inquisitorial powers of the grand jury are necessary for the initial discovery or proof of a violation of law, and in which, just as at present, the prosecution will be begun before the grand jury. At times it is needed to institute inquiry into the acts of public officials themselves, being presumably more independent of the accused officials than other organs of the administration of justice. For these situations the grand jury, both regular and special, continues to have a special and valuable function, for which it should be maintained. But where the prosecution is begun in a court of preliminary examination, if that examination be conducted in a careful and orderly way, there is, with rare exception, nothing valuable for the grand jury to do, and the duplication of preliminary hearings produces the inefficiencies which have been noted in this report.

Aside from the courts themselves the prosecuting attorney is probably the most influential factor in the entire process of adminstering criminal justice. Upon this officer rests the responsibility and the discretion to commence all criminal proceedings and carry them through to a conclusion. The inquisitorial function of the coroner comes into play only in the case of a death under suspicious circumstances, but the prosecutor must investigate every crime, search out every offender, procure an indict-

ment by presentation of evidence to a grand jury, and then endeavor to convert the indictment into a conviction by serving as attorney for the state in the trial of the accused. Such responsibilities clearly call for an officer of great skill as an investigator, as well as high legal capabilities. They also call for intimate coöperation with the sheriff, the police, the coroner, and for procedure that is proof against error, irregularity, and improper influences. Unfortunately these requirements are seldom met, and in urban counties they are especially difficult to satisfy. The county prosecutor, being an elected officer, is naturally a proficient politician whether he possesses legal and investigational ability or not. He is unable to exert any real control over other agencies involved in the processes of administering justice, and is himself independent of any supervision or superior control. The prosecutor's office in counties containing cities of considerable size must handle thousands of cases each year, and if this is to be done efficiently there must be a trained and experienced staff and a businesslike system of procedure. Because he is elected by popular vote the prosecutor is primarily a politician and seldom has any capacity for directing an organization of the type required for the job. The prosecutor's staff is generally chosen on a political basis, and is often largely beyond the control of the prosecutor himself. Under these conditions the investigation of crimes is inexpert, perfunctory, and largely unintelligent; the preparation of cases for the grand jury or for trial is hasty and inadequate, if not absolutely careless; and it not infrequently happens that political influence or money discreetly used has much weight in shaping the action of the prosecutor's office.

Before the administration of criminal justice can be made really effective there must be a drastic reorganization

of the prosecuting agencies. The status of the office of prosecutor must be entirely changed. In order to take the position out of politics, popular election as the method of selecting the incumbent must be abandoned. Virtually all authorities are agreed that in the case of the prosecuting attorney the disadvantages of popular election far exceed the advantages. It is also coming to be realized that as a state officer, responsible for the enforcement of state law, the prosecuting attorney should be appointed by and under the administrative control of the governor or attorney general of the state. To prevent such appointments being made on a political basis it would be wise to have vacancies filled by a competitive examination conducted under the auspices of the state civil service commission and to require that no person should be appointed without the endorsement of the bar association of the county in which he is to serve. Once appointed the incumbent should hold office during good behavior. As noted above, the office of coroner should be eliminated and also probably the office of sheriff in metropolitan counties. To produce the necessary coöperation between the police and the prosecuting attorney and to preserve the paramount authority of the state in the enforcement of criminal law, the prosecuting attorney might be given power to suspend or remove the head of the city police department in the event of the latter's refusal or habitual failure to provide proper police assistance for the prosecutor. The requirement of indictment by grand jury should also be dispensed with except in extraordinary cases.

The court system in large cities.—In the popular mind the administration of justice begins and ends in the courts; and although that is not literally true, the rôle of the courts is so predominant that the popular impression is not with-

out justification. In dealing with the administration of justice it is therefore necessary to give especial attention to the structure and operation of the courts. Of the system of courts found in the average American city the kindliest thing that can be said is that it is the result of historical accident rather than of intelligent design. As pointed out above, the early system of courts was of simple structure designed for simple rural conditions. The tremendous increase in the volume and complexity of litigation incident to the growth of cities necessitated an elaboration of both judicial machinery and court procedure, and the resulting development has been in the direction of complication and duplication rather than simplicity and unification. To quote a well-known and competent authority:

> It is impossible to-day to conceive of the efficient administration of justice in the modern large city, efficient from the standpoint of sociology, as well as efficient from the judicial and economic point of view, without specialization and thorough direction of judicial force. Not to have specialization and direction would be equivalent, in the business world, to employing fifty or one hundred clerks for a department store and allowing them to do any part of the work which they might, at any time, prefer to do. In recoiling from this absurdity, as our system of courts has slowly evolved under the noxious shade of verbose constitutional provisions, we have created numerous special courts and various classes of judges. In commercial terms, our judicial business is done at a number of small and disassociated shops. Occasionally a judge finds the particular work for which his temperament and training fit him, but seldom is he allowed to remain long in that branch. A really expert knowledge of the entire broad field of law is no longer humanly possible. At the present time our judges, admirable men for the most part, patient, long suffering, studious, are square pegs in round holes. They are commonly inferior to counsel specialized

in particular subjects. In some cities the separate, and alleged independent, courts in which they sit have conflicting and competitive jurisdiction. It is as though there were several water departments, several fire departments, and several health departments, all operating concurrently and competitively, in the same field. Good service is impossible. We even have no present ideals of good service.[1]

The court system of this country has been founded upon the hypothesis that in both civil and criminal jurisprudence the character of the court should be governed by the amount in dispute or the seriousness of the offense. Where the sum in controversy is small or the offense is a misdemeanor of minor character, the assumption is that petty courts composed of judicial officers of little or no legal training are appropriate and adequate; but when the litigation involves larger amounts or more serious offenses higher courts presided over by trained lawyers are deemed necessary. The judicial system has accordingly come to consist of hierarchy of courts ranging from the petty court of the justice of peace to the supreme tribunal of the state, each with its distinct province of authority and special rules of procedure. Grafted on to this structure are very often many special courts sharing or curtailing the jurisdiction of the regular courts. In analyzing the court system as it functions in urban communities it is necessary to deal separately with these various types of tribunals.

The inferior municipal courts.—The court of the justice of peace is first to claim recognition in a discussion of the petty municipal courts. As is subsequently pointed out, there are a few cities in which this venerable tribunal has

[1]Herbert Harley, Secretary, American Judicature Society, in *American Political Science Review*, August, 1915.

been entirely abolished; but in most cities the justices' courts constitute the principal agency for the adjudication of minor cases, though in a few cities the criminal jurisdiction of the justices of peace has been taken away and bestowed upon a special court of police magistrates. Justices of the peace in most states are elected by popular vote. They do not have to be lawyers, and as a rule are not. Generally they are not paid fixed salaries, but derive their compensation from fees, which is a very economical arrangement from the standpoint of the taxpayers because the costs are borne entirely by the litigants. Their civil jurisdiction extends to cases involving petty sums, usually below $100; their criminal jurisdiction includes the trial of petty misdemeanants and the preliminary examination of persons accused of more serious crimes. This jurisdiction, unless specially restricted, is co-extensive with the county or township in which the justice of peace is elected, regardless of the section in which he resides and holds his court.

As a civil tribunal the court of the justice of peace was intended to serve as an agency for adjudicating the small affairs of small people—a poor man's court. The fact that the justice need not be, and ordinarily is not, a lawyer, and the absence of elaborate and technical procedure supposedly would result in the dispensation of justice without formality, delay, or undue expense. In rural communities these anticipations have been, and doubtless still are, largely realized; but in the cities the justice of peace system not only has failed to function as expected, but has become a prolific cause of the miscarriage of justice. The reasons for this development are too numerous for exhaustive explanation here. Suffice it to say that the very excellences of the justice of peace system have be-

come its peculiar vices under the altered political, economic and social conditions prevailing in the cities. Popular election of justices of the peace, for example, under the conditions that are indigenous to the city, results not only in the occasional choice of ignorant and incompetent men, but quite regularly in the choice of unscrupulous politicians whose last aim is the objective administration of justice. Such justices in alliance with unscrupulous lawyers, who also flourish most abundantly in cities, form a combination that exists to prey upon litigants rather than to secure honest and speedy administration of justice. But even when corruption does not enter, the justice of peace system is unsuited to urban conditions, because the highly complex social and economic structure of the city gives great social and political importance to innumerable cases that are utterly trivial from the standpoint of the amount involved. Intelligence and skill are as necessary to the competent adjudication of such cases as though they involved millions of dollars, and this requisite intelligence and skill the untrained, and often ignorant, justice chosen by popular vote does not possess. With incompetent or venal justices, or both, and with shysters freely plying their nefarious trade, the court of the justice of peace is perverted into an agency for the defeat of justice. It is dilatory, expensive, unreliable, and just as difficult for the poor man to use as are the higher courts.

What has been said regarding the court of the justice of peace as a civil tribunal can be reiterated with increased emphasis in dealing with the justice of peace as a factor in the administration of criminal justice. In fact, recognition of the inadequacy of the justice of peace system in criminal cases has been so clear that some cities, as pointed out above, have deprived the justices of their criminal

jurisdiction and bestowed it upon a special body of magistrates who are required to be lawyers. The results of this reform have not been exceptionally gratifying. The police judges, though lawyers and compensated by salaries instead of by fees, are elected by popular vote in most instances and for short terms of office. Such judgeships do not generally attract lawyers of proved ability and judicial qualifications, but rather aspiring politicians of machine affiliations. Political influence thus becomes a potent factor in the administration of criminal justice. And the judges, even when unaffected by politicial pressure, are rarely competent to match wits with the adroit and skillful criminal lawyers who practice in the police courts. An independent tribunal with its own special jurisdiction and procedure, the police court tends to complicate rather than simplify the cumbersome judicial machinery of the city.

The higher courts in the city.—The diversity of the organization of the higher courts having jurisdiction in a city is dependent upon the degree of specialization that has accompanied the elaboration of the original judicial structure. As mentioned above, one tribunal of practically unrestricted jurisdiction in both civil and criminal cases is to be found in every American county, with jurisdiction over the urban as well as the rural parts of the county. When there is a big city in the county the bulk of the cases passing through this court originate in the metropolitan district. The court, however, is not in any way articulated with the city government, and organically is not even related to other agencies of county government. Beginning perhaps with a single judge, as the volume of litigation grows the number of judges is increased until perhaps the court consists of a dozen or

more judges of coördinate authority. Instead of being functionally organized with divisions or branches for criminal cases, domestic relations cases, equity cases, etc., each judge is expected to be a master of the entire law and to try all kinds of cases as they may happen to come to him. The court has no administrative head, although the judges collectively usually have limited powers to regulate their business and procedure.

In addition to the court just described there is occasionally an intermediate appellate court whose jurisdiction includes the city. This court stands between the general court of first instance just described and the supreme court of the state, and may have jurisdiction over a considerable territory outside of the city. The organization of this court is not essentially different from that of the county or common pleas court just set forth. While there may be only one judge, it is not uncommon in large cities to find several appellate judges of equal authority and substantially identical functions.

We now come to the special courts, not regularly included in the foregoing system. The number and character of these courts vary greatly in different places. The commonest special courts in metropolitan districts are probate courts, juvenile courts, and domestic relations courts. The jurisdiction of these special courts is difficult to describe exactly. They may have exclusive jurisdiction over the special subjects assigned to them, although such is not invariably the case. And in addition to the special subject committed to them they may have concurrent jurisdiction with other courts over other matters. The more special courts there are, and the more elaborate the organization of the regular courts, the greater is the resemblance between the judicial system and the proverbial

Chinese puzzle. And of course the more chaotic and complicated the structure of the judicial system, the more difficult is the effective administration of justice.

Owing to the disorganized character of the higher courts functioning in cities and the resulting jurisdictional difficulties legal proceedings are slow, expensive, and of uncertain outcome. Owing to the lack of proper specialization among judges, which is an incident of disorganization, judicial errors and mistakes are disproportionately numerous. And owing, in part at least, to the loose and disorganized judicial system, legal procedure is so specialized and technical as to facilitate the evasion of the law and the defeat of justice.

The jury system.—The jury system is an integral part of our judicial machinery. Regardless of the inherent merits of trial by jury as a legal institution, it is now generally recognized that the defects of the jury system as it operates in the modern American city constitute one of the most prolific causes of the maladministration of justice. It is not necessary to undertake at this point an exhaustive consideration of the defective functioning of the jury system. The student of municipal government should realize that the jury system was not designed to function under the stress of the peculiar social, economic, and political conditions now characteristic of urban life. If it is to continue in use under such conditions it should be radically reformed. The methods by which jurors are chosen, for example, constitute a wholly different problem in a great metropolitan area from that in purely rural territory; and while the present system in the latter case works with reasonable satisfaction, in the former it produces results that are absolutely deplorable. Likewise the questions that juries have to decide—which should be

the controlling factor in determining the composition, powers, and procedure of juries —are far more complex in the cities than any problems that come before juries in the rural districts. The breakdown and malfunctioning of the jury system under the pressure of urban conditions is admittedly responsible for a large number of the mistakes and errors that result in re-trials and appeals, and for the frequent contamination of the judicial process by venality and political influence. It is also affirmed that a considerable part of the delay and resultant expense of court procedure may be attributed to the failures of the jury system.

The technicalities of procedure.—It is a common and well-founded complaint that numberless failures in the administration of justice are to be attributed to procedural technicalities, which afford loopholes by means of which criminals may escape the just penalties of the law and civil litigants evade their just liabilities. To burden this discussion with a full consideration of the inherent defects of our codes of criminal civil procedure would be unduly pleonastic. The important point is that the necessary simplification of procedure cannot be effectuated without a corresponding simplification of judicial machinery which will make it possible to charge the courts with the responsibility for formulating and putting into operation plain and simple rules of practice. This is more properly a function of the courts than of the legislature, and yet it is not possible for the courts to perform it satisfactorily with their present decentralization and disunity of organization. It is interesting to note that unified courts like the municipal courts of Chicago and Cleveland have this power to regulate their own procedure.

The selection and tenure of judges.—Because of the

importance of the judge in the judicial system and because the mode of choosing judges and the conditions of their tenure of office are the most important factors in determining the quality of the persons elevated to judicial positions, this question must be given some consideration. The elective method of choosing judges is followed in most places, and the opinion of almost all competent students of the matter is that this plan has proved to be a failure, even though the nomination and election of judicial candidates be on a non-partisan basis. It is an uncontroverted fact that in the long run popular election does not produce judges of the highest ability and integrity, but tends rather to place upon the bench the lawyer with a talent for politics and demagogism. The conspicuous exceptions emphasize the regularity with which this occurs. The appointive method of choice, which is the alternate of the elective method, has many limitations, but under the test of experience it has given better results than the elective method. Furthermore, it can be safeguarded by restricting the discretion of the appointing officer by requirements such as that the appointee must have satisfied certain merit tests administered by the civil service commission or must have the endorsement of the local bar association or both. Limitations of this kind cannot be effective in the case of popular election. When the defects of the method of selection are considered in connection with the insecurity of tenure to which judges are subjected, it is not surprising that it is impossible to attract the best legal minds of the community to the bench. To pass through the distasteful experience of a political campaign and have nothing but the assurance of having to face another such experience in two, four, or six years is more than a highly trained and sensitive-minded lawyer is ordinarily

willing to endure. The most obvious comparison is between the judges of the United States courts, who are appointed to hold office during good behavior, and the judges of the state and local courts who for the most part are elected for short terms. Because of the dignity, honor, and security of Federal judicial positions the appointments are eagerly sought by the ablest members of the bar, despite the relatively low salaries paid. But in the states where judges must court the electorate periodically and where therefore security of tenure is not assured, the ablest members of the bar quite commonly shun judicial service.

The municipal court movement.—Progress in the reform of machinery for the administration of justice has been very slow. Perhaps the most significant development of the last two decades has been the establishment in several cities of genuinely unified courts of inferior jurisdiction. Chicago was the pioneer in this reform. Before the establishment of the Chicago Muncipal Court in 1905–1906, the administration of justice in Chicago was in a notably deplorable state. The public was being victimized by a horde of corrupt police magistrates and justices of the peace, and the higher courts having jurisdiction in the city were virtually paralyzed by conflicts of jurisdiction, defects of organization, and technicalities of procedure, their calendars being so glutted that they were on the average about three years behind schedule. A reform movement was inaugurated, and resulted eventually in the enactment by the state legislature of the law creating the Municipal Court of Chicago. The leaders of this reform movement had two governing purposes: (1) the elimination of the police magistrates and justices of the peace of the city of Chicago, and (2) the creation of a

tribunal to supplement the higher courts of Chicago in such a way as to afford substantial relief from the delay and expense occasioned by their congested dockets. To attain these objects there was created a court that was without precedent in the annals of American jurisprudence. It was given civil jurisdiction over cases of all kinds in which the sum in controversy was not more than $1,000. Thus it superseded the justice of peace in minor cases and also had authority to try cases within the limit specified that might be transferred from the circuit and superior courts of Cook County. It was to have criminal jurisdiction in all cases where the punishment involved was less than imprisonment in the state penitentiary and also was made responsible for the conduct of preliminary examinations in the cases of all accused persons in the city. The decisions of the court could be attacked by appeal only in the appellate or supreme courts of the state. More interesting than the jurisdiction of the court was its organization. It was to consist of a chief justice and 27 associate justices (the number has since been increased) elected by popular vote. The chief justice was made the superintendent or business manager of the court with effective administrative powers. He was authorized to superintend the preparation of the calendar of cases for trial, make such a distribution of cases between judges and branches of the court as he might deem expedient, and to assign the judges to the several branches of the court as in his judgment seemed fitting. In order to obtain the benefits of specialization the court was organized into several branches according to the general subject-matter of its work. And to enable the court to transact its business without time-consuming and tricky formalities and technicalities of procedure, it was given

power to formulate and prescribe its own rules of practice and procedure, the justices being obliged to meet periodically under the presidency of the chief justice to perform this and other functions. The results of this reform were so astounding, both as to the quality and the volume of the work done by the court, that it speedily attracted nation-wide attention.

Among the cities which have followed the lead of Chicago in establishing unified municipal courts are Cleveland, Cincinnati, Philadelphia, and Detroit. The first three cities mentioned have followed the pattern of the Chicago Municipal Court rather closely, but the Detroit reform is of slightly different character. The Detroit court has criminal jurisdiction only, but it is the only court having criminal jurisdiction in Wayne County (Detroit is Wayne County for all practical purposes). Every criminal case from the smallest misdemeanor to the most serious felony is tried in this court, and it conducts the preliminary examination as well as the subsequent trial of all persons accused of crimes. The court consists of a chief justice and six associate justices, and the chief justice is made the administrative head of the court, as in the case of the municipal courts of Chicago, Cleveland, and Cincinnati. By a majority vote of the justices the court may establish such branches or other divisions as may be deemed expedient. The court quickly proved its ability to administer criminal justice more speedily and more effectively than the independent and disrelated courts which it succeeded; and, whether it is of any significance or not, there was sharp reduction in the number of crimes committed in the city at the end of the first year of the operation of this court in 1921.

It will be noted that complete unification of judicial

machinery has not been attained in any one of the cities which have established municipal courts. The Detroit court has only criminal jurisdiction, while in the other cities the court has both civil and criminal jurisdiction to a limited extent only and merely supplements pre-existing courts. This is one reason why the difficulties of administering justice have not been greatly ameliorated in these cities. Other reasons are to be found in the inherent defects of these municipal courts themselves, particularly in regard to the manner of selecting judges and the restricted jurisdiction of the courts.

An ideal system of law administration for a metropolitan district.—Although few authorities could be brought to agree on the details of an ideal system for the administration of justice in a metropolitan district, it is believed that there would be substantial agreement as to the following broad propositions.

1. So far as it has to do with the enforcement of law, local government should be completely unified. The co-existence and independence of city, county, and various special units of local government result in confusion, conflict, and indecision. Divided responsibility means irresponsibility, and irresponsibility means inefficiency, if nothing worse. Such an integration of the law-enforcing agencies of local government in a metropolitan district should bring about a proper coördination between the police system, the prosecuting system, and the judicial system. This is absolutely indispensable to the effective administration of criminal justice.

2. The court system of the metropolitan district should be entirely unified. One court, properly organized from the standpoint of administrative efficiency, with jurisdiction over all civil and criminal cases great and small

originating within the metropolitan district, would do more to facilitate the administration of justice than almost any other reform that could be mentioned. Such a court would of course be authorized to formulate and enforce simplified rules of procedure.

3. The machinery for the administration of justice should be supplemented with all necessary modern equipment for research and ascertainment of facts essential to the intelligent enforcement of law.

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CHAPTER VIII

PUBLIC SAFETY

The popular touchstone of successful municipal government is the management of the police department. Whatever its achievements in other lines, if an administration fails to operate the police force acceptably, it is bound to be regarded as more or less a failure by the general public. And by the same token successful administration of the police department will atone for a multitude of lapses along other lines. Yet the mass of people, despite the importance they attach to police administration, have little genuine appreciation of the difficulties and problems involved in it. In the judgment of the average citizen successful police administration consists chiefly in keeping the police force free from the contamination of politics and vice; whereas that is but the beginning of good police administration, there being many matters that are in reality more fundamental.

The relation of the city and state as to police control.—Should the city police force be under the direct and exclusive control of the municipal authorities, or should it be under the control of an agency of the state government and in no way controllable by the authorities of the city? Both of these systems of overhead control are to be found in operation, and there exists a vigorous controversy as to which is preferable. In favor of state

control it is contended that the police are as much the agents of the state government as of the city, and that it is the duty of the state to take care that they are not derelict in the enforcement of state law. It is argued, moreover, that, owing to the incompetence of city government and boss domination in city politics, the state cannot depend upon cities to maintain police forces that will enforce state laws efficiently. Opposed to these arguments, and in behalf of local control of police, it is said that the people of a city have a more direct interest in the enforcement of state law within the city than the people of any other part of the state, and that the failures of cities in the matter of law enforcement are not so much attributable to the fact of local control of police as to other causes, such as the improper organization of city government or the malicious meddling of state politicians in municipal affairs or the attempt to force the people of the cities to adhere to standards of public morality which prevail only in the rural districts. Furthermore it is asserted that when the responsibility for maintaining law and order is removed from the people of the city, they become apathetic and suffer a decline in their capacity for self-government.

The teachings of experience are not particularly comforting to either side of the controversy, for examples of very good and very bad police departments can be found under both systems of superior control. The conclusion of Mr. Raymond B. Fosdick[1] is that local conditions alone must determine which system of overhead control is to be preferred. In places where there is an alert and active civic consciousness he thinks local control may be very satisfactory, but in places where such civic consciousness

[1]See Fosdick, *American Police Systems*, pp. 119–137.

is wanting state control may be better. A very interesting proposal in the nature of a compromise between state control and local control was made by Dr. A. R. Hatton in a paper read before the National Municipal League in 1909. He suggested that the head of the police department should be a commissioner appointed by the mayor to hold office during good behavior and the continuance of efficiency, but to be removable by the mayor at any time by the filing of complete written charges. Mayors, police commissioners, and sheriffs, according to this proposal should be removable by the governor of the state for delinquencies in the enforcement of state laws. There should be at regular intervals a state inspection of local police forces, and the governor should be provided with a small but efficient detective force to assist him in acquiring information about local conditions and in prosecuting violators of state law in case of the failure of local officers to do so.

The overhead organization of the police department.—There are two principal systems of overhead organization in American police departments—the board system and the single commissioner system. For a great many years the board system was almost universal, but it is now being rapidly supplanted by the single commissioner system. Board management works best under conditions which require the devotion of much time to debatable questions of policy, but in a semi-military organization like a police department where the primary requisites are unity of command, vigor of action, and celerity of decision, the board does not function well. Under the single commissioner system, which is now found in the great majority of cities, the question is frequently raised as to whether the commissioner of police should be a civilian appointed

from outside the police force or a police officer promoted from within the force. Both methods have been tried with varying success. When a man rises from the ranks to be administrative head of the police department his usefulness not infrequently is impaired by his past connection with the force. Every large organization has its factional differences and personal intrigues and jealousies, and it is very seldom that a man can remain long on the police force without in some way becoming involved in affairs of this sort. But even though such were not the case, the training of a policeman and a police officer is hardly calculated to develop the qualities of leadership and executive ability desired in the head of the police department. The police officer by virtue of his training and experience is likely to become a martinet and a follower of routine instead of a capable executive. If there could be assurance that civilians with executive ability and experience in affairs would be chosen to head the police department, there could be little doubt of the preferability of the civilian head. But when men lacking not only these qualities but also that of personal integrity are elevated to the position of commissioner of police solely because of political considerations, there is little that can be said in favor of the plan.

The uniformed officers of the police force.—In most American cities the police force is commanded by an officer known as the chief of police. When this position and that of commissioner of police or director of public safety co-exist there is often an anomalous and embarrassing situation owing to the failure of the city charter clearly to define their respective spheres of authority and to establish a practical working relationship between them. While nominally the commissioner is the head of the de-

partment, an attempt is often made to give the chief an independent sphere of authority. The Cleveland charter, for example, gives the chief of police exclusive control over the stationing and transfer of all patrolmen, officers, and employees of the police force under such rules and regulations as the director of public safety may prescribe. The chief is also given authority to suspend members of the police force subject to review and reinstatement by the director of public safety. The inevitable result of an arrangement of this kind is friction, conflict of authority, and dispersion of responsibility. Where the office of commissioner or director exists, it is doubtful if that of chief is necessary (in a number of cities it has been eliminated); and where the two exist together the chief should occupy the position of a technical aide or deputy to the commissioner. Any division of responsibility for command is fatal to good police organization.

In addition to the chief of police there are a number of other uniformed ranks above that of patrolman, the commonest are captain, lieutenant, and sergeant; in some of the larger cities the rank of inspector is found above that of captain, and in a few rare instances the rank of corporal is found between that of sergeant and patrolman. The city is usually divided into a number of precincts or districts for police administration with a captain as chief commanding officer in each. Each captain as a rule is assigned a number of lieutenants who perform duties prescribed by him and succeed to command in fixed order when he is off duty. The sergeants are the officers who, under the captain and lieutenants, have direct charge of the patrolmen on duty, each sergeant having a certain number of patrol posts to supervise.

The selection of policemen.—Obviously the most funda-

mental consideration in building up an efficient police force is the process by which members of the force are selected. Despite the progress made in the last two or three decades few American cities have as yet achieved high standards in the selection of policemen. The day of the unrestricted domination of the spoils system is passing, though all too slowly; but we have yet to achieve the truly scientific and intelligent selection of men for the police force. In the larger cities the merit system governs the selection of members of the police force, but, as pointed out in a previous chapter, the administration of the merit system is usually so defective that many men of improper or inadequate qualifications are appointed to the force. To make a competent officer, a man must have extraordinary physical endowments, a high degree of mental alertness, courage, self-control, and thorough moral integrity. A system of merit tests which fails to rate candidates for the police force according to the extent of their possession of these qualifications cannot be considered successful, but it is very rarely that these essential qualities are brought distinctly to the foreground by the prevalent methods of choosing policemen. As a rule final appointments to the police force are not made until after the recruit has served a probationary period varying from three months to a year. The value of this requirement is lost in the majority of cities because little effort is made during the probationary period to study the recruit's efficiency and adaptability to the service. Almost every probationer who succeeds in avoiding infractions of the rules during his probationary period is certain of final appointment.

The training of policemen.—Police service is so unlike any form of private employment that very few recruits

come to the police force prepared in advance for the work, and consequently before a man can become an efficient police officer he must be given a certain amount of special training. The traditional method of police training has been a few days and nights of practice patrol in the company of an older officer, supplemented by instructions and discussions at the roll-call period. The manifest shortcomings of this method of training have led to the establishment by some of the larger cities of police training schools offering more or less complete courses of instructions which the recruit must pass creditably in order to be appointed to the force. The New York training school, as built up under the commissionership of Arthur Woods, has quite generally served as a model for other cities. As indicative of the content of the training course the following subjects are listed as having been included in the course given in the New York school: first aid, report writing, practical civics, ethics in conduct, practice in sharpening powers of observation, social service by policemen, rules and regulations of the department, laws of the state and ordinances of the city powers and duties of a police officer, care and use of weapons, humane handling of prisoners, methods of criminal identification, elementary rules of evidence, court procedure, athletics. Perhaps the most elaborate and interesting course of police training is to be found in Berkeley, California. In addition to the subjects covered in the New York course, police recruits in Berkeley are required to study such subjects as physics, chemistry, physiology, anatomy, criminology, anthropology, criminal psychology, psychiatry, microbology, parasitology, and micro-analysis.

Police discipline.—Discipline is one of the most difficult problems of any large organization, and in police depart-

ments it is doubly difficult because of the extensive safeguards necessary to prevent the administration of discipline with a political bias. In a number of cities the power of discipline is for this reason virtually taken out of the hands of the superior officers of the police department and given over to the civil service commission, and in some cities it is practically impossible to remove a member of the police force without a judicial trial or hearing before the civil service commission. It is the vicious influence of politics in police departments that has led to these extreme precautions. Unfortunately they have not been successful in purging the police department of baneful political influences; they have, on the contrary, almost eliminated all possibility of effective disciplinary action. Eventually we must learn that effective discipline can be secured only by delegating the power of discipline to the commanding officers of the police force without limitation and holding them strictly responsible for its use. If it is abused, the remedy is not to hamstring the responsible commanding officers in their power of dealing with subordinates, but to build up a system of selecting officers that will place in positions of responsibility men who can be trusted with the power of discipline. One would scarcely argue that because officers of the United States army are likely to abuse their disciplinary powers for political reasons, these powers should be curtailed to the point of ineffectiveness. That would be manifestly absurd in a military organization. The police department, it should be remembered, is a semi-military organization, and must be disciplined according to military standards.

Promotion in the police department.—In all of the larger cities the higher positions in the police force are filled by promotion from the lower grades instead of by appoint-

ment from outside. The quality of the commanding officers of the force, therefore, depends in no small measure upon the basis upon which promotions are made. In most cities seniority is given considerable weight in promoting policemen from lower to higher ranks, and often there is a rule that a man is not eligible for promotion until he has served a specified number of years at the lower rank. In addition there is commonly some sort of examination given to candidates for promotion, and the rules frequently require the promotion of the candidate receiving the highest grade on the examination regardless of the judgment of superior officers as to the relative fitness of candidates for positions of command. If there were some sort of examination to measure exactly the candidates' capacity to command, this would not be objectionable. But since no examination can disclose this quality, it is unwise to restrict superior officers to the individual who chances to make the highest mark on an examination which is largely informational. If adequate efficiency records are kept in the police department, these should constitute a large factor in rating the various candidates for promotion. Oftentimes the efficiency record is little more than a disciplinary record of the individual, and in that case it has only negative value in determining fitness for promotion. After all, in selecting persons for promotion there is no substitute for the honest judgment of the superior officers under whom the candidate for promotion has served, and it is a deplorable fact that the official personnel of the police department in many cities is such that the honest and independent judgment of competent superior officers cannot be had.

Methods of police patrol.—Uniformed patrolmen assigned to foot-patrol duty constitute the great majority

of the personnel of the police force in all cities. These are the city's first line of defense; and as they are the most numerous, so are they the most expensive part of the police force. The traditional method of patrol is to divide the city into precincts or districts, each of which is in turn divided into patrol posts or "beats." To each post a patrolman is assigned, and it is his duty during the time he is on the post to walk the route that has been laid out, prepared to meet any emergency which may arise; to make certain observations as required; and to report periodically to his station house and to officers charged with supervision of patrol on the post. Laying out patrol posts is a difficult task that should be accompanied by a thorough study of the various factors that affect the police problem in the particular section of the city concerned. Not all streets and districts are alike in crime hazard, and consequently do not require the same kind or degree of police protection. The former system, which yet survives in many cities, of creating patrol posts of practically the same size is now recognized as obsolete. But assuming that patrol posts are laid out in the most scientific and intelligent manner, there is still a question as to the suitability of foot-patrol to modern conditions. The vast area of modern cities makes it almost impossible from a financial standpoint to maintain a force sufficiently large for intensive foot-patrol. There are but two alternatives. One is to under-police all sections of the city equally, and the other is to concentrate the police force in the areas of high crime potentiality and provide for the less dangerous sections of the city such scanty patrol that the degree of protection afforded is negligible. To escape these equally undesirable alternatives a few cities are experimenting with motor-patrol as a substitute for foot-patrol. If effective

methods of patrolling with motorcycles or automobiles can be worked out it will be possible to patrol cities far more intensively than is possible with foot-patrol without increasing the size of the police force. Cities that have experimented extensively with various forms of motor-patrol are New York, Detroit, Seattle, and Los Angeles.

The detective force.—Although the detective force is sometimes spoken of as the second line of defense in police work, it is in some respects more vital in successful police administration than the uniformed force. The common notion that the function of the detective is merely to discover the offenders whom the uniformed police fail to find, betrays a wholly inadequate conception of the purpose and utility of the plain-clothes men. A detective force properly trained and utilized should be more useful in the prevention of crime than in the discovery and apprehension of unknown criminals. But as a matter of fact the detective force is rarely organized and used as a preventive agency, and in most cities the personnel of the detective force is so inferior as to make such use impracticable. Detectives are usually recruited from the uniformed force by direct assignment or as the result of passing a special examination, though in a few cities they are drawn directly from civil life by one of the two foregoing methods. Neither system of recruiting produces satisfactory material for the detective force. The training and experience of the patrolman do not particularly fit him for effective detective work and not infrequently constitute a serious handicap. The detective recruited from the police force is likely to be little more than a shrewd and experienced patrolman, but encumbered with all of the bureaucratic traditions of the uniformed force. Examinations cannot be devised which will reveal whether

or not a person has the capacity to make a good detective because the qualities that make a successful detective are imponderable and elusive. Recruitment from private life is perhaps less objectionable than recruitment from the uniformed force, if care is taken to select persons of the highest native ability and provision is made for giving them the experience and training necessary to detective work. To meet the modern criminal on his own ground the detective must not only be a person of high intelligence and extraordinary analytical powers, but must be versed in the basic sciences, as physics, chemistry, and physiology, and must be especially well grounded in criminology and criminal psychology. An adequate force of skilled and properly trained detectives, if intelligently directed, could probably do more to combat crime than a whole host of uniformed patrolmen. Unfortunately the detective force in most American cities is just the antithesis of what it could and should be. By reason of political favoritism or the grossly defective methods of choosing detectives, it often happens that the detective bureau is loaded with the worst material on the force. Because the remuneration is greater and because the degree of supervision is necessarily less strict, patrolmen are keen to be assigned to detective duty—particularly the ones who make the least desirable detectives. In connection with the survey of the administration of justice in Cleveland in 1920 and 1921 the army intelligence tests were applied to the entire personnel of the police department and the most astounding disclosure of all was that the detectives individually and collectively made the poorest showing of the entire force. One is tempted to believe that the same condition might be revealed in many other cities if the tests were applied.

Criminal identification.—One of the important technical necessities of successful police administration is a system of identifying criminals. Two well-known methods are in vogue: (1) the Bertillon system, which is based upon precise physiological and anatomical measurements, and (2) the finger-print system, which is based upon impressions of finger prints. Mr. Raymond B. Fosdick, in his recent book entitled *American Police Systems*, states that in Europe the finger-print system is supplanting the Bertillon system for the reason that it results in greater certainty of identification and that it is simpler to administer; but in the United States, he says, the Bertillon system is retained in virtually all cities after the finger-print system is introduced. This absurd duplication is attributable to the fact that under our federal system of government the enforcement of criminal law is exclusively a function of the states, and consequently uniformity of police methods throughout the United States cannot be brought about except by the voluntary coöperation of state and municipal authorities in all parts of the country. This, of course, is practically impossible to achieve. If, therefore, one or two large cities are backward in displacing the Bertillon system with the finger-print system, all other cities which would exchange information with those cities must retain the Bertillon system.

Without touching upon the scientific and technical aspects of administering either system, it may be pointed out that uniformity of administration throughout the country and close coöperation among cities in the exchange of information produced by the criminal identification system is indispensable if either one is to be of the highest value. Even if the finger-print system should entirely supersede the Bertillon system, its effectiveness would be

greatly impaired by the variations of administration to be found among our forty-eight independent criminal jurisdictions.

Traffic regulation.—One of the newest and also one of the most exacting tasks of the modern police department is traffic regulation. Undoubtedly there was something of a problem in handling vehicular traffic in a few of the larger cities before the advent of the automobile, but owing to the slowness of the horse-drawn vehicle and the ease with which it could be controlled there was little necessity of police regulation of street traffic. The automobile made traffic regulation imperative, both in order to reduce the hazard of accident and to prevent congestion. All cities have elaborate ordinances limiting the speed of motor vehicles, regulating parking, specifying how corners shall be turned, and the like; and the enforcement of these ordinances is one of the biggest jobs of the police department. Yet the ever mounting toll of deaths and accidents attests the fact that the art of traffic regulation and control has not kept pace with the multiplication of motor vehicles and the hazards resulting therefrom. In fact the point has been reached in many cities where the problem has come to be too big for mere police regulation, and drastic steps must be taken to widen streets, restrict vehicular traffic on streets where street cars are operated, open through streets for automobile traffic only, establish streets in which traffic may move in one direction only, and perhaps classify motor vehicles and restrict heavy traffic to certain thoroughfares.

There was a time when it was thought that the traffic squad need not be selected with any degree of care and that it required no particular training. It is now apparent that the duties of a traffic policeman are so exacting that

men must be carefully selected for this work and given thorough training before being placed on duty. It requires intelligence, patience, presence of mind, courtesy, and endurance of no mean order to direct traffic at a busy corner for any length of time.

The suppression and control of vice.—The problem of vice, especially gambling and prostitution, is perhaps the most elusive and frustrating difficulty with which the modern police department has to deal. In former times public policy with respect to vice took the form of indifference and neglect or of licensing and public regulation. Under such a public policy the police problem was simply that of maintaining order and enforcing such regulations as were prescribed, and the strain put upon the resources of the police department was negligible. But under the modern policy of absolute suppression of vice, the police problem is profoundly different. The policy of suppression does not eradicate vice, but does render it illegal and punishable and thus drives it into surreptitious modes of activity which the police must stamp out. This means that the police force must be used to search out and secure the prosecution of all violators of laws forbidding vice, and this is a task that taxes the integrity and ingenuity of the police most severely. Whether vice can be eliminated by legal prohibition, assuming enforcement of maximum effectiveness, is a question for reformers to debate. From the police standpoint the prohibition of vice means one of two things—lax enforcement or strict enforcement. Lax enforcement, which is in reality toleration, is likely to occur when the policy of suppression is unpopular with a large and influential element of the population, or when the government of the city comes into the control of politicians who have connections with the vice interests,

or when it is impossible to provide a police force sufficiently strong in numbers and well enough supervised to achieve strict enforcement. Persons engaged in vice strive to secure immunity from police interference, and will bend every effort to corrupt the police from the patrolman on the beat to the highest officers at headquarters. Lax enforcement invites corruption. Strict enforcement, on the other hand, does not reduce the probability of corruption and at the same time imposes upon the police force a herculean task. To keep under close surveillance every apartment house, hotel, café, theater, club house, road house, and so on that might be used for purposes of gambling or prostitution; to patrol parks, beaches, and resorts; to stamp out street soliciting, eliminate gambling at base ball games, prize fights, horse races, etc.; in a word, to do thoroughly everything necessary to the strict enforcement of vice laws would leave the police little time for other duties. Special squads detailed to the suppression of vice conduct spectacular raids, but every informed person knows that these are sporadic and that vice flourishes in spite of them. It is doubtful if the taxpayers would tolerate the enlargement of the police force to the extent necessary to cope effectively with the vice problem.

At this juncture it may not be inappropriate to observe that the Eighteenth Amendment and the Volstead Act have thrown upon city police departments an additional vice problem of incalculable magnitude. No city can afford to build up a police force large enough to stamp out bootlegging, and public opinion in most cities would not sustain such a step if it were feasible. The enforcement of prohibition in every large city is extremely inadequate, and probably will be so for many years.

The police and the prevention of crime.—The city police

force is generally regarded as an agency for dealing with crime after it occurs, and the utilization of the police for the prevention of crime is an idea that has not yet made great headway. Yet if the police were more intelligently used in the constructive work of crime prevention, there would be much less need of them for dealing with infractions of the law. Because no one has studied the subject, it is difficult to estimate the extent to which the police may be employed in preventive work. The famous experiment of Commissioner Woods in New York with the so-called junior police demonstrated that the police can do a great deal in the prevention of juvenile delinquency; and as practically all habitual criminals are graduated from the ranks of juvenile delinquents, the prevention of juvenile delinquency is tantamount to crime prevention. If properly trained, the police may also perform certain other social service functions which will result in a reduction of crime. In dealing with professional criminals the police can do much to prevent crime by studying their habits, learning their haunts, and destroying their organizations which are usually dominated and directed by a few bold leaders. This of course would be primarily the function of the detective bureau. Crimes of violence could be largely prevented by rigid enforcement of the laws forbidding the sale and possession of revolvers and pistols, although all that can be done by the police is of little avail so long as the courts are lax in penalizing offenders and so long as Federal laws impose no bar to the importation of weapons from outside the state.

Fire protection.—There are still a few American cities of considerable size that depend upon volunteer fire-fighting organizations, but most cities maintain a force

of paid firemen. The problems of organizing and manning the fire department are not basically different from those already noted in the case of the police department. The selection of firemen involves the same primary considerations as to physique, intelligence, and character as the selection of policemen. Likewise the training of firemen needs to be about as comprehensive and intensive as the training of policemen. We have observed that cities have signally failed to solve these problems in administering their police departments, and it can be said without hesitation that they have failed equally in the administration of their fire departments.

When it comes to the actual employment of personnel, the fire department presents a different problem from the police department because policing is a day-by-day task which keeps the police force continuously occupied, while fire-fighting is intermittent, seldom requiring the employment of all or any considerable part of the force and requiring the use of individual companies only in occasional emergencies. Consequently firemen for the most part spend their time in comparative idleness. But on account of the emergency character of conflagrations and the need for an adequate force when such emergencies arise, firemen in most cities are obliged to live in the station house, being given periodic days of leave. In addition to these differences between policing and fire fighting, the reader should remember that combatting a conflagration is a spectacular group effort, while policing is largely a matter of inconspicuous individual activity. The impulses which control a man under the stimulus of a dramatic collective undertaking and those which dominate him when he must act alone on a lonely patrol post are entirely different. The fireman is usually acclaimed a

hero whether he succeeds or fails, but the policeman, whose work must be done without a dramatic setting and an appreciative audience, receives little praise and much blame even though he may have done everything humanly possible under the circumstances. It is plain therefore that the maintenance of morale and the administration of discipline rest upon psychological bases that are inherently different in the two services. Questions like rates of compensation, hours on duty, vacations, and penalties for breaches of discipline must naturally be handled differently in the fire department than in the police department.

Fire-fighting is largely a technical affair, involving the use of highly specialized machinery and apparatus. The purchase of such equipment has been a prolific source of official peculation in nearly every city, and of much resultant scandal. The recommendations of the officials of the fire department must be accorded decisive weight in the selection of equipment, and apparently the only way to prevent them corruptly abusing their discretion is to build up the fire department in such a way as to eliminate as far as possible all men of weak moral fiber, and then to provide for some sort of independent outside check on the purchase of fire-fighting equipment such as might be given by a bureau of municipal research. It goes without saying that the type of equipment used should be governed by the fire-fighting problems of the city or district in which it is to be used. Many cities find themselves overloaded with elaborate equipment that they have little or no use for, because precaution has not been taken to make a thorough survey of the nature of the fire hazards likely to be encountered, prior to the selection of the equipment. One development that has been well nigh universal within

the past few years has been the substitution of motorized for horse-drawn equipment. Authorities on fire fighting are agreed that this is a wise and progressive change, except that it is believed that in some of the northern cities a certain amount of horse-drawn equipment ought to be retained for emergency use in winter.

Fire prevention.—American cities far excel European cities in the size, equipment and organized efficiency of their fire departments, yet the destruction of property by fire in American cities averages not less but rather more than in European cities. Seeking an explanation of this apparent paradox, we find that in the United States we have concentrated on developing the art of fire extinguishment, while in Europe they have concentrated on the art of fire prevention. We are now gradually coming to perceive that the European policy is the more economical as well as the more efficient. The requisites of successful fire prevention are: (1) an adequate body of law forbidding and penalizing the continuance of fire hazards, (2) an efficient organization for the enforcement of this body of law, and (3) the active coöperation of the general public. The first is a matter of public policy as to such matters as the regulation of the construction and use of buildings, the handling and storage of inflammables and explosives, the accumulation of inflammable waste material, and the installation of electrical equipment. Manifestly there cannot be effective prevention of fire without an adequate fire code. The second requisite is simply a matter of thorough and constant inspection reinforced by prosecution of violations of the code. The members of the fire department can be largely employed in doing this work. The third requisite is a matter of education by which the people are brought to appreciate and understand the most

common fire hazards and to coöperate with the fire department in eliminating them. This educational work may be carried on by publicity campaigns conducted in the newspapers, in the schools, through the exhibition of films in moving picture theaters, and so on. A number of cities now set apart a day each year to be observed as fire prevention day, and on this day all available means of publicity are directed to the subject of fire prevention.

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CHAPTER IX

CITY PLANNING

The city planning movement should be an omen of great encouragement to those who have been wont to despair of the future of the American city. Originally an æsthetic cult embraced by a few idealists with a vision of "the city beautiful," the city planning movement has now descended into the realm of practical affairs and, without forsaking its æsthetic ideals, is grappling with the problem of the economic and social development of cities in such a scientific and constructive way that it bids fair to work a revolution in urban life.

Significance of the city planning movement.—City planning in the modern sense means the process of planning and controlling the physical development of the city so as to make possible the finest and fullest community life that the situation and environment of the city will permit. "Community planning" would perhaps be a more appropriate term to describe the modern conception than "city planning"; for, as Mr. Thomas Adams has so acutely observed, all of our cities have been planned, but they have been planned from an individual instead of a community standpoint. In the era of uncurbed individualism that is now swiftly receding into the past the physical layout of each city was planned either by individual property owners or by official bodies under their influence, and with a primary view to the immediate ad-

vantage and profit of the property owner. The interest of the community and its future requirements were rarely given more than passing consideration. Nearly every American city to-day is paying a heavy penalty for its shortsightedness in allowing individual interest to outweigh community interest in city planning; and the severity of the penalty is increasing as the city grows and its social and economic structure becomes more complex. Relief can be had only through a comprehensive process of genuine community planning that will so far as possible rectify the mistakes of the past and prevent their repetition in the future. In a word, to escape from the Procrustean bed on which it has stretched itself, the modern American city must make a supreme effort at democratic self-control and self-direction. And that is city planning.

History of the city planning movement.—According to Mr. Nelson P. Lewis[1] the modern city planning movement in the United States dates from about 1893 and is largely an outgrowth of the stimulating effect on the popular mind of the so-called "white city," which was one of the features of the international exposition which was held in Chicago in that year. To quote Mr. Lewis: "It is safe to say that such effective grouping of a series of monumental buildings of harmonious design had never before been accomplished or even attempted, and . . . the effect they produced has been permanent, and the influence of the general plan is quite evident in many of the ambitious projects for the creation of civic centers which have since been put forward." This impulse toward city beautification, taking the form of movements to establish civic centers and lay out parks and boulevards, came very late in this country as compared with European cities;

[1]N. P. Lewis, *The Planning of the Modern City*, p. 7.

but real city planning in the sense of regulating and controlling the social and economic development of the city through a physical plan, has been even more retarded. The first city in the United States to limit the height of buildings was Boston in 1911, and the first city to adopt a comprehensive zoning ordinance was New York in 1916. But within the past ten or a dozen years we have taken prodigious strides in city planning. Within that period have come most of the monumental judicial decisions which have had the effect of clearing away numerous legal obstacles to scientific city planning; within that period also chambers of commerce, real estate boards, and other agencies representing many of the powerful economic interests affected by city planning have become aware of the imperative importance of wise city planning and have actively aided the furtherance of the movement. It is not surprising, therefore, that during the period under consideration more cities have instituted city planning programs and set up official agencies for city planning, and that more has actually been accomplished in the way of recasting the physical structure of cities and adopting methods of controlling future development than in all the preceding years of American municipal history. And yet the past decade seems to be but a promise of what we may expect in the years to come.

What is involved in city planning.—At one time city planning might have been classed as an art, but modern city planning is certainly a science, and must be carried on according to scientific methods and principles. When the object is to design the streets and thoroughfares of the city, lay out building tracts and regulate the use of property so as to attain such results as the stabilization of property values and rents, the sound and progressive

growth of commerce and industry, the facilitation of street traffic and local transportation, the promotion of public health and the prevention of anti-social conditions of living—when such as these are the objects of city planning, it is evident that *a priori* methods will not do. The first step in modern city planning is, therefore, a thorough and all-inclusive survey of existing conditions as respects such matters as streets and street traffic, public utilities in their relation to the physical layout of the city, housing, sanitation, recreation, the location of public buildings, the fluctuation of property values as determined by the use of property, the legal authority of the city and its financial limitations. Intelligent use of the information produced by such an investigation should make possible the formulation of a program by means of which to correct the deleterious conditions that have resulted from want of planning or wrong planning and to solve the developmental problems of the future.

The street system of the city.—It is generally conceded that the first problem to be attacked in city planning is that of the proper width and arrangement of streets. This is true not simply because of the obvious relation the street system bears to all matters of traffic and transportation, but also because of the almost equally direct connection between the street system and such vital matters as the distribution of water, gas, electricity, and telephone lines, the layout of the sewer system, the collection and disposal of garbage, the location of parks and public buildings, and the utility of building lots for various industrial, commercial, or residential purposes. In these and many other matters the structure of the city street system is an important causal factor in the problems and difficulties that arise.

What would constitute an ideal arrangement of streets and thoroughfares is not a question of very great practical importance in this country; for the great majority of American cities have long since passed the point where the development of an ideal street plan is possible. There are three general types of street design: (1) the rectangular plan, which is simply laying out the streets of the city, so far as topographical conditions will permit, in two series of parallel lines that intersect at right angles; (2) the radial plan, which has the principal thoroughfares radiating from a common center like the spokes of a wheel; and (3) the concentric plan, which is usually characterized by a series of streets in the form of concentric circles intersected by radial streets emanating from the common center. A fourth plan, if such it can be called, is to allow the principal streets to follow the contour of some natural feature like a harbor, a stream, or a hill. With a few eminent exceptions American cities have grown up on the rectangular plan, whose chief virtues have been extreme simplicity, and economy in the use of land (from the private owner's standpoint). In fact most of our cities have become so solidified on the basis of a gridiron system of streets that it is not now possible or practicable for them to be completely recast in a different mould. Street planning in the average American city is, therefore, not primarily a matter of evolving and carrying out a scientifically correct street plan, but of devising practicable and acceptable ways and means of rectifying the most serious and damaging defects of the rectangular plan, and of controlling the development of new streets in such a way as to avoid the errors of the past. The actual activities of our cities in street planning, consequently, have to do mainly with such things as the widening and extension

of streets, the relocation of railway tracks, the elimination of grade crossings, the routing of street cars and automobiles, the location and construction of subways, bridges, and viaducts, and the control of street design in new plottage that is to be added to the city.

Authorities on street planning are substantially agreed that a combination of the radial and rectangular plans, such for example as is used in Washington, D. C., if properly adapted to local topographical conditions, is on the whole best suited to the requirements of city planning. The broad diagonal thoroughfares cutting across the basic rectangular layout will provide the main arteries needed for through traffic to all parts of the city and there will be many irregular intersections that will afford ideal locations for parks, public buildings, and monuments. It is also believed that such a combination lends itself admirably to planning for commercial and industrial development and for the most efficient and economical extension of public services. Some city planners have worked out a very interesting combination of the rectangular, radial, and concentric principles, but it is scarcely within the realm of practical accomplishment in American cities. A number of American cities are, however, gradually working toward some sort of a rectangular and radial combination.

The regulation of the uses of property.—The ownership of real estate in American cities has always been a colossal gamble, owing to the instability of values caused by the unrestricted right of owners to use their property in any way except to create a nuisance or a fire hazard. Suppose a man owned a desirable lot in a retail district and had erected upon it a building suitable for retailing. Nothing could prevent the owners of the adjacent property from

putting upon their land factories, warehouses, or office buildings that would virtually destroy the retail character of the district and greatly depreciate the value of property designed for retail purposes. And when the character of the district had been transformed in one way or another nothing could prevent an invasion of new uses that would vitiate the old values. In residence districts the same thing could occur. Next to a fine residence would be built an apartment house or a garage or a grocery store that would ruin the residence property and cast a blight upon the whole district. No investment in real estate was safe. Unscrupulous speculators, taking advantage of the resultant fluctuations of realty values and causing those fluctuations in order to take advantage of them, made fortunes; honest and innocent owners, whose object was simply the use of their property in accordance with its original development, lost heavily, and not infrequently were utterly ruined. Any one who with understanding has watched the continuous procession of uses in a typical section of almost any American city—residence, retail shopping, wholesale, commercial, industrial, and so on—can have no illusions as to the terrible price that has been paid for individual freedom in the use of urban property. But so long as it could not be perceived that this condition of affairs had any consequence other than the undoing of individual property owners, it caused no great public concern. Owners were supposed to assume all such risks upon making an investment and to have no just grievance when calamity overtook them. Restrictions in articles of conveyance have been very widely resorted to as a measure of protection against future invasion of a particular district by adverse and deteriorative uses, but experience has demonstrated that these measures, taken

on private initiative and being inflexible in operation and more or less limited in duration, do not meet the situation. Gradually it has become evident that uncontrolled use of private property in our cities has resulted in immeasurable harm to the community as well as to private property owners. We have seen owners permitted to use their property in such a way as to promote traffic congestion in some parts of the city that could be remedied by no amount of corrective design in reconstructing streets and thoroughfares; we have seen owners of property deliberately build up slums constituting a menace to the physical and moral well-being of the community; we have seen railways and factories allowed to locate and build in such a way as to stifle the future economic and social development of the community along sound and progressive lines. Conditions of this sort call for community action.

The last ten or twelve years have been replete with endeavors on the part of cities in all parts of the country to curb uneconomic and anti-social uses of property by private owners. All sorts of expedients have been tried—establishing building lines, limiting the height of buildings, sanitary regulations, restrictions as to the area to be used for building, limitations on the construction of billboards, and finally and most significant of all, what is technically known as "zoning." By "zoning" is meant the districting of the city so as to set apart specifically designated sections of the city to be used principally or exclusively for certain purposes, as heavy industries, light industries, wholesale trade, retail trade, residence, and so on. When such districts or zones are blocked out and dedicated to a certain use, restrictions are imposed upon the use of property within each district, which are designed to preserve its character and encourage its use for the purpose for which

it is set apart. The nature of the restrictions imposed within the various zones will of course vary with the uses to which the zones are devoted. Offensive or non-conforming uses will be prohibited; the height of buildings will perhaps be limited in such a way as to prevent deviation from the general type of building required for the prevailing use for the particular district; for the same reason the distance from the property line at which buildings may be erected and the amount of the lot which may be covered with buildings will probably be specified; and there may be some limitation as to the general type of construction to be allowed in each district. It should be understood that this is but a general description and that the actual number and classification of zones and the specific limitations imposed therein vary widely from city to city.

This rather simple description of the zoning principle gives no idea of the difficulties that are inherent in its practical application. It can be perceived at once that zoning cannot be carried on intelligently unless it takes into consideration the street plan of the city. The two are vitally interrelated and should therefore go hand in hand. If zoning could have been put into operation in the incipient years of our cities and carried on progressively as they have grown, it would not be a difficult principle to execute. But since zoning must be applied to cities that have already largely grown up and in such a way as to control their future development, the difficulty of setting up the zones or "use-districts" so as to give universal satisfaction is almost insurmountable. It is impossible to lay out districts that even approximate ideal conditions because of the large number of non-conforming uses that are bound to be inherited from the past. The question

then arises as to how to deal with these non-conforming uses. If zoning regulations could be made retroactive, they could, of course, be eliminated; but such a proceeding would not be tolerated for a moment, even if it were legally possible. The only remaining alternative is to allow them to remain, but to prevent their modification in any way which would perpetuate the non-conformity with zoning requirements. In this way they will be gradually eliminated by depreciation and obsolescence. Another difficulty is how to prevent non-conforming uses of conforming buildings. This is a regulation that cannot be effected without administrative machinery to conduct continuous inspection, report facts, and initiate proceedings against violators. Good results have been obtained in some cities by having the fire department made responsible for the inspections, to ascertain whether buildings are being used in conformity with zoning limitations, the fire department being already engaged in inspections to check up on fire hazards in the same buildings. Technical questions of great difficulty also abound in zoning. What should be the basis for restricting the height of buildings? How should provisions be made for an equitable division of light and air between buildings on adjoining lots? What should be the basis for determining what proportion of the lot should be used in building? How can the matter of set-back from the street be regulated justly and scientifically? These are a few of the problems that inevitably arise and must be solved in each zone in accordance with local conditions and the uses prevailing in the zone.

Civic centers and public buildings.—As previously noted, it was the civic art phase of city planning that first made a deep impression upon the public mind in this country. Civic centers resulting from the proper location

and grouping of monumental public buildings are admittedly desirable for æsthetic reasons, and they doubtless stimulate civic pride and advertise the city favorably abroad. But they should also have a somewhat more utilitarian value. The location and grouping of public buildings should be done with a view to the convenience of that large and ever-growing part of the public which either transacts business with or is employed by public agencies; and it should also be recognized that the location of a civic center containing practically all of the major public buildings in a city will have an important bearing upon street traffic and local transportation. It has sometimes happened that an otherwise superb civic-center plan has proved disappointing in the end because of failure to keep these practical considerations in view. The planning of civic centers involved not only the architecture of the buildings and the landscaping of the grounds, but the proper co-relationship of such buildings as city hall, court house, post office and library, and also the effective co-ordination of these buildings as a group with the business center of the city, railway and steamship terminals, and main arterial thoroughfares. In the design of public buildings great progress has been made in recent years. It has been discovered that a building can be both beautiful and useful. And it is being discovered that both beauty and utility are to a great degree dependent upon location.

There are certain public buildings, as schools, police stations, fire stations, and branch libraries, that must of necessity be scattered throughout the city. The location of these should not be haphazard or the result of political influence, but should be determined by a careful study of their use in relation to the problems and requirements of

the district. In design they should be beautiful and harmonize with the general character of the district in which they are located. There are many private buildings of a semi-public character, like hospitals and museums, whose location should also be subject to public control in order to effectuate the city plan.

Public recreation.—Lack of foresight in providing parks, playgrounds, and other facilities for public recreation has been one of the major derelictions of American cities. Only in the newer cities which were founded late enough to profit by the mistakes of their predecessors do we find adequate facilities for public recreation in the form of a well-articulated plan. The costliness, both from the standpoint of social well-being and of public finance, of the civic blindness of former generations in regard to municipal recreation is now being keenly realized in many of the larger cities where, to relieve cramped and congested conditions that are deleterious to the physical and moral welfare of the inhabitants, it is necessary to purchase and open up for recreation purposes large areas of built-up land.

The problem of planning public recreational facilities embraces first of all the proper correlation of the recreation system with the street plan and the scheme of zoning, if there be any such. In this connection it may be noted that the rectangular form of street planning is exceptionally ill suited to the effective location of parks and other open spaces, particularly as respects their accessibility and design, and in respect to their relation to surrounding property. As noted above, an overlay of radial streets on the gridiron produces conditions exceedingly favorable for the location of parks and other recreation centers. Two types of parks have to be considered in the city plan

—the large tracts which are kept in a natural or semi-natural state and the small tracts of a square or two which must be artificially landscaped. The first type obviously cannot be located in the more congested portions of the city, and often can be placed only in its peripheral districts or entirely beyond its boundaries. Since these parks are to serve the entire city, their maximum value cannot be realized unless they are properly linked up with arterial thoroughfares and local transportation facilities. Parks of the second type are intended to serve neighborhoods only, and they should be numerous and widely disseminated in order to furnish elbow-room and breathing space to as large a number of the inhabitants as possible. Playgrounds and beaches constitute a somewhat different problem. The location of the latter must be largely determined by natural conditions, but the location of playgrounds should be dictated by the character of the population and the nature of the recreation problem. The larger parks can afford space for adult playgrounds, such as tennis courts, baseball diamonds, and golf links; but these can serve only a relatively small number of people. While it might be desirable to provide neighborhood playgrounds for adults, the expense in the older cities is almost prohibitive. But for the children playgrounds must be provided at any cost; otherwise the children will play in the streets or worse places under imminent danger to life and limb and under conditions inimical to their moral welfare. School grounds might be used for this purpose, but in a great many cities the growth of school population has caused school authorities to consume practically all of their available land for building purposes. It has therefore become necessary in several of the older cities to acquire land suitably located and raze the buildings on

it in order to open up play space for the children of the neighborhood. This problem of playgrounds is one that will require more attention and study as urban agglomeration continues.

City planning and the outskirts of the city.—There is never a sharp break between urban and rural territory, but in between the two there is always found a sort of "no man's land" possessing many of the characteristics of both, especially the unattractive ones. This marginal area is of vital importance in city planning for several reasons. In the first place, the future expansion of the city will occur in these areas, and if they are allowed to develop independently of the plan of the city, conditions are bound to crystallize in such a way as to render the progressive extension of the city plan difficult, if not wholly impossible. Again, these outlying districts, if uncontrolled, will develop industrial, sanitary, and social conditions that will cause the deterioration of the adjacent urban territory on the one side and of the adjacent rural territory on the other. It is to the outskirts, moreover, that the older cities at least must look for their most extensive development of parks and recreational facilities, and hence it is desirable that they should be able to prevent the utilization of these districts in such a way as to preclude the establishment of these indispensable recreational facilities when they are needed.

Certain cities, notably Los Angeles, have in recent years annexed large areas of semi-rural territory, but as a rule this action has originated in other motives than a well-defined policy for the control of the outskirts of the city. In the case of Los Angeles, for example, the major motive seems to have been to obtain facilities for port development and water supply. The proposal has been

advanced by several authorities on city planning that every city should extend its boundaries to include large belts of circumferential agricultural land and should control this in such a way as to preserve its agricultural character until such a time as it can be properly developed into urban territory. In the United States such a policy is difficult to put into operation because of the restrictive limitations under which cities must act in the annexation of territory and because of the legal obstacles to the graduation of municipal tax rates in such a way as to make it possible to utilize such outlying belts for agricultural purposes.

Official organization for city planning.—The common form of official organization for city planning is a board or commission, quite generally known as the city planning commission. At first these bodies were established on a temporary basis for the purpose of formulating a city planning program, and when that function had been performed they would go out of existence. It is now generally perceived, however, that city planning is a continuous problem that calls for permanent governmental machinery, so most of the larger cities now have permanent city planning commissions. The power of a city to establish a city planning commission and determine its functions depends upon the freedom from state control which the city enjoys. In states where municipal home rule prevails, cities have much latitude in such matters, while in other states they have to depend upon statutory authorization of some sort. That the board form of organization is best for city planning seems never to have been questioned. This is probably explained by the fact that the framing of a city plan is a deliberative process that should involve much discussion and debate before final decisions

are made, and that the enforcement of the city plan is in a certain measure a judicial process. The members of the city planning commission are usually chosen by the mayor or the mayor and council jointly, though other methods of selection are sometimes prescribed. The number of members is usually around seven or nine, and their terms of office are generally so rotated as to establish a certain continuity of personnel. It is also common to have certain city officials designated as *ex officio* members of the city planning commission to serve along with the lay members, who may or may not be required to possess special or technical qualifications.

The powers of city planning commissions vary widely. As a rule the nature and extent of the powers conferred upon the city planning commission depend upon the extent to which the city is committed to the principle of scientific and comprehensive city planning and upon whether the commission is to serve as an active governmental agency or merely as a body of representative citizens constituted for consulting purposes. In a great many cities the powers of the city planning commission are mainly advisory, and its activities consist of the formulation and progressive development of a city plan that has little or no legal effect, conducting investigations of city planning problems, and carrying on publicity. Other cities give the city planning commission affirmative powers. It is required in some cities that when a question pertaining to the city plan comes before the council or other appropriate municipal authority, the matter must be referred to the city planning commission and all action deferred until the city planning commission shall have made its recommendations. After the recommendations of the city planning commission have been made, however,

they need not be followed by the body in which the question originated. Other cities have virtually the same requirement with the exception that the city planning commission can only be overridden by an extraordinary vote of the council or other originating body. There are a few cities in which the city planning commission is endowed with full and direct power not only to formulate plans, but to impose its decisions upon other municipal authorities, and even in some instances to carry into effect the plans which it makes. Ordinarily, however, the routine work of executing the details of the city plan is apportioned among the several branches and departments of the city government according to the way it fits in with their respective functions.

The execution of the city plan.—In straightening, widening, or extending streets, in vacating property for civic centers, parks, or playgrounds, in building bridges, viaducts, or subways, and in fact in almost all of the reconstructive activities of city planning in this country, it is frequently necessary for the city to acquire property or property rights which it does not own. This can be done by purchasing from the private owners if they are willing to sell and at the city's terms. Otherwise the city must resort to the process of condemning the property under the right of eminent domain.[1] Taking by condemnation is usually a slow, uncertain, and costly proceeding, involving many legal difficulties; and yet it is about the only expedient that the city has. Much has been done in recent years to avoid the necessity of condemnation by enlisting the coöperation of chambers of commerce, real estate boards, and other commercial and civic bodies in

[1]This is the sovereign right of the state to take private property for public use by making just compensation to the owner.

educating owners to appreciate the value of proposed improvements from both the community standpoint and that of the abutting owners. For various reasons it is often desirable for the city to take by condemnation more land than it will actually embody in the proposed improvement. Because of the almost insuperable legal difficulties connected with this process of excess condemnation, city planners now quite generally advise the accomplishment of the same result by other methods than condemnation if possible. Of the engineering and other purely technical problems of executing city planning projects of the kind referred to above this is not the place to speak. There is a vast literature on the subject if one cares to pursue those matters.

In carrying out that part of the city plan which is based upon restrictions upon the use of property the problems are different. The restrictions, whether a part of a comprehensive scheme of zoning or not, must be enforced by public authority. This can be done by the usual process of prosecuting the violators of law in the courts and thus subjecting them to the penalties which the law prescribes for disobedience. But in many instances it has been found that this is a cumbersome and unsure method of enforcement which comes into operation only after the damage has been done. Therefore a great many cities provide that before any improvement can be made on a tract of land either in the way of new construction or the alteration of old construction the approval of the city planning commission or some other municipal authority must be obtained. This affords an opportunity to refuse to authorize uses that are not in conformity with city planning restrictions, and thus to prevent violations of the law.

The legal problems of city planning.—The legal difficulties in city planning have arisen chiefly in connection with the employment of the power of eminent domain to appropriate property needed by the city in the execution of city planning projects, and the use of the police power to impose restrictions upon the use of property. The power of eminent domain is the power of government directly or indirectly through duly authorized agencies to take property from private owners and devote it to public use. This is accomplished by a proceeding known as condemnation, which is semi-judicial in character although not necessarily a court proceeding. It is a universal rule of constitutional law in this country that private property may only be condemned for public use and upon making just compensation to the owner. It is far easier to determine what is a just compensation for property about to be taken than to determine whether it is to be taken for a public use. The former is primarily a question of fact which may be settled by a proper administrative proceeding, but the latter is essentially a question of law and must be decided by the courts. The courts have held that there is no fixed rule for determining whether a particular appropriation of private property is for public or a private use, and that each case must necessarily depend upon its own peculiar circumstances. As this affects city planning, it means that those purposes for which cities have long been accustomed to take private property (streets, parks, sites for public buildings, and the like) will be readily sustained by the courts as of public character; but those newer purposes for which cities may desire to take private property, as for instance the taking of easements in property to establish a building line, will be subjected to very close scrutiny and probably held un-

constitutional unless the public nature of the taking can be established beyond a reasonable doubt. The problem of excess condemnation involves difficulties of much the same sort. There are various reasons why at times a city may desire to take by condemnation more land than will be actually consumed in making the improvement, and at once the question arises as to whether such a surplus taking is for a public use. American state courts have been almost unanimous in the opinion that such excess condemnation is not for a public use, and therefore not constitutional. In order to enable cities to surmount this judicial obstacle, several states have amended their constitutions so as to legitimize excess condemnation, and as far as the state constitution goes this disposes of the matter. But there is the further question of whether these constitutional amendments themselves are not in violation of the Fourteenth Amendment of the Federal Constitution which forbids any state to deprive any person of life, liberty, or property without due process of law. This question can only be answered by the Supreme Court of the United States, and as yet it has not been squarely presented to that tribunal.

A large crop of legal questions has arisen in connection with the use of the so-called police power of the city and the state to impose restrictions on the use of property. The police power is that broad and undefined power, which is inherent in all governments, to restrain individual freedom both as to person and property in order to safeguard and promote public interest in such fundamental matters as public safety, health, morals, and the like. In this country the exercise of the police power by the states and their subordinate governmental units is restricted by the due process clause of the Fourteenth Amendment which

was mentioned in the preceding paragraph. Similar restrictions are to be found in all of the state constitutions. The reconciliation of the police power and due process of law is a judicial matter, and there is a vast body of judicial decisions which prescribe limits for the invasion of individual rights by governmental authority. From the standpoint of city planning interest centers about the question of how far a city may go in regulating the use of private property in order to accomplish the objects of the city planning program. While the Supreme Court of the United States, which is the final arbiter of all these questions, has made the broad declaration that the police power extends to all great public needs, it has been very cautious in admitting the validity of police regulations not founded on public health, safety, or morals. This conservative attitude has frequently resulted in the invalidation of municipal regulations of the use of private property designed to accomplish the beautification of the city or the general comfort and convenience of its inhabitants. It is for this reason that the courts have rather consistently refused to uphold municipal ordinances restricting the use of property adjacent to parks and boulevards, regulating the character and location of billboards and signs, establishing building lines, limiting the height of buildings, or forbidding other uses of property not within the category of nuisances. Of recent years, however, the courts have become much more liberal in dealing with legislation of this kind. Limitations on the use of property that would have been declared unconstitutional without a doubt fifteen years ago have recently been sustained in a number of leading cases, and apparently the courts are coming to look with considerable favor upon the limitation of uses by means of comprehensive zoning.

Nevertheless, great care must still be exercised in drafting zoning ordinances and other legislation regulating the use of property to conform to the requirements of the courts that such legislation shall not be arbitrary or discriminatory, that it shall not fall into the category of class legislation, that the restrictions imposed shall be fair and reasonably adapted to the accomplishment of the purposes they have in view. In short, there are still many legal obstacles in regulating the use of property in cities, but we are beginning to discover that they are not insuperable.

The financial problems of city planning.—Modern city planning requires huge financial outlays for the acquisition of property or property rights and the construction of the improvements needed to carry out the city plan. And with the stringent and inelastic limitations as to lax levies and indebtedness under which most of our cities labor, the financing of the city plan is a very big problem.

The first question to demand an answer is to what extent the city should finance city planning improvements by special assessments instead of general taxation. This is a pivotal question, because as a rule special assessments and special assessment bonds do not come within the purview of statutory or constitutional limitations on municipal taxation or indebtedness. Large use of special assessments in financing city planning will therefore greatly increase the city's ability to underwrite its planning program. Since special assessments are legal only when an improvement confers a special benefit upon the property assessed, it is clear that there are many city planning improvements that cannot be financed in that way. Of such character are monuments, public buildings, and possibly bridges, viaducts, and tunnels. But it is

equally clear that parks, boulevards, playgrounds, and street improvements as a rule enormously enhance the value of the adjacent property; and in the opinion of many authorities the resulting benefit is sufficient to warrant the defrayal of the entire cost of the improvement by special assessments on the property benefited by it. Certainly it is true that we have not resorted to special assessments nearly as much as we should in making such improvements, and in many instances the general tax rate has been loaded with the cost of improvements which have tremendously increased the wealth of property owners in the favored sections without requiring from them any proportionate contribution to the public treasury. Moreover, if cities would resort more freely to special assessments, when such are justifiable, they would have a greater margin of freedom under their general limitations and would therefore be less often embarrassed in financing those improvements which must be made from general taxation.

Despite the possibility of relief by resorting to special assessments, there will always be numerous cases when cities under severe financial strictures will be unable to finance the city planning improvements which must be made from general taxation. Under these conditions cities can only strive for a relaxation of their financial limitations or devise means of evading them. Ordinarily it is not difficult to induce a state legislature to relax the statutory limitations on the financial powers of municipal corporations to the extent of permitting tax levies or indebtedness in excess of the fixed limits, provided the question is submitted to a popular vote in the city and a favorable verdict returned at the polls. Very frequently such a provision is an open gateway to cities in financing city plan-

ning. Constitutional limitations on the financial powers of cities are obviously much more difficult to modify. When relaxation of financial restrictions is impossible or inexpedient, cities frequently resort to evasive practices. The creation of special municipal corporations, such as port districts, improvement districts, park districts, and so on, has been one of the most successful ways of escaping municipal financial limitations, as these special corporations usually enjoy separate and independent financial powers, although they operate within the city and perform municipal functions.

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CHAPTER X

PUBLIC WORKS AND PUBLIC SERVICE

The term "public works" is used in several senses, but in its original and literal meaning it refers to the construction and maintenance of public improvements of all kinds. Our national government and our state governments are engaged in vast and multifarious activities involving the construction and maintenance of public works, but always as secondary and incidental to the main functions for which those governments exist. But in the case of cities the construction and maintenance of public works is one of the primary functions. Indeed, from a historical standpoint the public works functions are the first and paramount functions of municipal corporations; for in our early history the chief reason for granting corporate autonomy to local communities was to enable them to provide those local improvements that were essential to community life.

The public works functions of cities.—The constructional activities carried on by cities, or under their supervision and control, include the grading and paving of streets, the erection of bridges and viaducts, the laying of sewers, the building of pumping plants, reservoirs, and pipe lines for water-supply systems, the construction of public buildings, the laying of conduits and the erection of posts for street lighting purposes, and certain phases of

the improvement of parks and playgrounds. Many millions of dollars are annually expended for the construction of such local improvements, and the annual construction bill of American cities is mounting far more rapidly than their ability to meet it. In connection with all public improvements there is a problem of maintenance, and obviously as the number of completed public works is multiplied the maintenance problem grows in magnitude. In fact the technical and financial difficulties of the problem of maintenance are often as perplexing as those of original construction. And in connection with both construction and maintenance there are numerous engineering problems. Sound engineering is a necessary prerequisite for planning the construction and maintenance of all public improvements, and is equally indispensable in the execution of such plans. These three, construction, maintenance, and engineering, are the major phases of municipal public works.

The direct *vs.* the contract system of construction.—The nature of the problem confronting the city in the construction of public works is determined first of all by whether the direct system or the contract system of construction is followed. Under the direct system the city, through appropriate official agencies, prepares the plans for the work and the specifications under which it is to be executed and then buys the materials and employs and directs necessary labor force to carry it out. Under the contract system the plans and specifications are prepared by city authorities; then bids are asked from private contractors. The contractor whose bid is accepted furnishes the materials and manages the labor forces, and the city confines itself to supervision of the contractor to insure compliance with the terms of the contract. It is instantly apparent

that there is a world of difference between the practical operation of the two systems. The direct system obliges the city to maintain an organization that is qualified and equipped not simply to draw plans and formulate specifications, but to carry on the multitudinous and minute details of actual construction. The contract system, on the other hand, requires approximate perfection in the development of plans and specifications, and in addition an efficient follow-up system to prevent contractors from deviating from the plans and specifications and other terms of the contract.

As to the comparative merits of the two systems there is much controversy. The advantages claimed for the direct system are that the elimination of the private contractor's profit means a great saving to the city; that public agencies, having no pecuniary interest in the result, will do the work more honestly and efficiently than private contractors who try to swell their profits or avert losses by "skinning the job"; that there is greater flexibility in rectifying mistakes and making adjustments on account of unpredictable contingencies when the whole process of construction is under the direct control of the city than under the contract system, the modification of contracts and the revision of specifications being regarded as both difficult and dangerous; and that getting rid of private contractors will purge municipal politics of one of its most pernicious and evil forces. Those who oppose the direct system contend that none of the foregoing claims can be sustained by the testimony of experience, and that the direct system possesses certain positive defects that render it unsatisfactory, if not dangerous, in operation. It is asserted that city officials as a rule are prone to be actuated by political or personal motives, and that in the construc-

tion of public works by the direct method the effect of these motives is inevitably to produce extravagance, corruption, mismanagement, and demoralization. It is further contended that city officials rarely possess the technical qualifications and experience necessary to fit them to conduct gigantic construction projects successfully even if they are uninfluenced by improper incentives. In favor of the contract system it is argued that private contractors have the technique and experience that are necessary for efficiency in construction work, and that genuine competition among bidders will enable the city to get its construction work done by contract far more cheaply than it can do the work itself. Furthermore it is claimed that labor, which is one of the largest factors in construction cost, is more efficient under private than under public management. It is doubtful whether the case for either system can be sustained on grounds of experience. Nevertheless it is a fact that the contract system is much more extensively used than the direct system, and it is possibly true that the contract system is better suited to the major public works than the direct system.

Contract procedure.—In order to safeguard the interests of the city in the use of the contract system every practicable and intelligent precaution must be taken in preparing the plans for the proposed improvement, in specifying the quality of the materials to be used and the character of the work to be done, in securing bids and awarding contracts, in drafting a clear, consistent, and enforceable contract, and in checking on the work of contractors in order to enforce compliance with plans, specifications, and the provisions of the contract. The designing of plans for public improvements is purely an engineering function, and whether or not it is done with that degree of technical

perfection that is prerequisite to good contract procedure depends upon the professional attainments of the city engineer and his staff, and upon their freedom from political influence or control. It may be doubted whether under the best of political conditions it will be possible to obtain a city engineering staff competent to meet all of the diverse and complex technical demands that must be imposed upon it. Therefore it would seem advisable that provision should be made for consulting service from the outside. This can be done by employing consultants on various engineering problems as they arise, but possibly a more fruitful method would be the creation of a permanent advisory council on municipal engineering to consist of members designated for stated terms by local architectural and engineering societies. As a matter of public spirit the representatives of these bodies would be glad to give the city the benefit of their professional advice without compensation; and in certain instances it might well be required that plans should not be finally adopted without the approval of such an advisory council. And it is also true that such an advisory body could render valuable aid even when outside engineering service is employed for the preparation of plans.

The formulation of specifications as to materials and workmanship to govern the contractor in the fulfilment of his obligations is also a technical task that generally devolves upon the city engineering department. There is, however, such a large body of specifications that have become practically standardized in engineering and construction practice throughout the country that no city ought to experience difficulty in developing adequate specifications for any project it undertakes. It goes without saying that the specifications should be clear and

explicit, and also reasonably capable of performance. They should also be couched in the standard trade terminology. How comprehensive and exacting they should be depends largely upon the special circumstances of each case. As a rule, it is supposed that more elaborate and arbitrary specifications are necessary in public work than in private work. It is not generally appreciated that the character of the plans and specifications prepared by the city for a particular project is a weighty factor in influencing the decisions of reputable contractors for or against the submission of bids, and also in controlling the figures in bids that are submitted.

The letting of contracts is the pivotal step in the contract system. If the system breaks down at this point because of failure to take due precaution against improper influences or because of failure to secure effective competition among responsible bidders, it is almost impossible to repair the damage later on. There has been so much collusion and corruption in the letting of municipal contracts that most cities have sought by law to eliminate all possible official discretion in the process of making awards. To such extremes have these precautions been carried that in many cities the officials responsible for awarding contracts must accept the lowest bid regardless of all other considerations, and in some cases legal proceedings may be instituted to set aside the contract even after it has been awarded. Admitting the desirability and necessity of safeguards against abuse of official discretion in the letting of contracts, still it must be clear that we should at some point strike a fair balance between unrestricted official discretion and the complete curtailment of such discretion. There are numerous instances in which the official body letting the contracts knows that

the lowest bidder is not the best bidder, and that a costly system of inspection will be necessary to prevent the substitution of inferior materials and workmanship for that which has been specified. Again, it often happens that if the body awarding the contract had authority to make modifications in the terms and conditions of performance prior to the final award, it could avoid the costly supplementary and subsidiary agreements that are made necessary by mistakes and omissions in the original plans and specifications. In a word, extreme distrust in the integrity of public officials is sometimes as costly as unlimited confidence in them. Safety lies in pursuing an intelligent middle course.

It is highly desirable that the process of letting contracts should be of such character as to produce genuine competitive bidding on the part of many responsible contractors. To accomplish this the proposed improvements must be properly advertised. Such advertising is usually done in official publications, newspapers, and trade journals. The advertisement which states in considerable detail the important facts regarding the proposed undertaking is more likely to obtain a large response than one which confines itself to the laconic announcement that bids will be received up to an appointed time and that further details may be had upon application. Prudence would dictate also that ample time should be allowed between the first advertisement and the closing of bids for prospective bidders to make a full investigation of the facts. Otherwise careful contractors will not become interested. All of the conditions under which bids will be received, considered, and acted upon should be set forth with unequivocal clarity, and this is emphatically important in the case of all matters that are later to be incorpo-

rated in the contract. Public works officials sometimes supplement official advertising by telephone notification to contractors, and this is usually quite effective.

The formal record of the agreement between the city and the contractor is embodied in a document known as the contract, and this usually includes, or annexes by reference, the plans, specifications, proposals, and other essential preliminary data. Without going into the purely legal aspects of the contract, it may be said that the contract should comprehend all of the essential details of the agreement, that it should be free from internal contradictions and inconsistencies, that its language should be precise and unambiguous, and that it should provide a mode for the adjustment of differences between the parties as to its meaning and application. Attached to every contract is a bond given by the contractor to guarantee on his part faithful compliance with the terms of the contract and to indemnify the city against losses resulting from his failure to execute his obligations. City officials have frequently neglected to exercise due care to ascertain whether the sureties on the bonds of contractors were actually responsible and capable of meeting its obligations, and consequently a great many bonds have proved worthless when sued upon. A reputable surety company is far preferable as surety on a bond than any number of ordinary sureties.

The final step in municipal contract procedure is the supervision of the execution of the contract. This is a responsibility that naturally falls upon the city engineer and his staff, and is essentially technical in character. There are, however, certain aspects of this work that are of interest and importance to the non-professional citizen. In almost every big construction job unforeseen conditions

arise which render the execution of the contract according to the strict letter of its terms impracticable or impossible. The common method of meeting such emergencies is to frame a supplementary or subsidiary contract covering the special case; and this, of course, calls for the exercise of extreme caution on the part of the city engineering department to safeguard the integrity of the original contract. Another difficulty that almost invariably arises is the attempt on the part of the contractor to secure permission to substitute materials or workmanship alleged to be in every way as good as those specified in the contract. To lay down an inflexible rule against all substitutions might in some cases result in undue hardship upon the contractor, but at the same time the allowing of substitutions involves such grave dangers that the prudent city engineer will only make such concessions when the advantage to the city is clear and unmistakable. The city engineer must keep a force of inspectors on each job, and upon the integrity, technical qualifications, and good judgment of these men the successful enforcement of the contract largely depends. Sometimes the question arises as to whether the inspectors should be paid by the city or the contractor. Certainly no one would advocate that they should be directly in the pay of the contractor, but it may be proper for the city to arrange for reimbursement from the contractor for the compensation paid to inspectors. It would not seem that the city gains anything by having the contractor bear the inspection costs, because in that event the contractor will surely include such costs in his bid.

The paving problem.—The paving problem is a perennial one. More than any other municipal construction problem it persists year after year, and more than any other, perhaps, it excites public opinion. When a city

hall is built, a system of waterworks constructed, or a sewer system laid down the job is done for a half or three-quarters of a century except for possible additions or extensions occasioned by the growth of the city, but a paving job is seldom good for more than twenty years and under some conditions for scarcely half of that time. The consequence is that while big construction jobs of other kinds may come once or twice in a generation, there is necessarily a big paving job every year; for no city can keep up with the paving requirements of its new districts and properly replace the outworn pavements of its older districts without having a huge annual paving program. Because paving is an ever-present problem and because perhaps it seems to involve fewer of the mysteries of engineering science than other public works, public opinion as a rule is far more active in regard to paving than any other major constructional activity of municipal government. Public opinion will yield readily enough to official and technical judgment on questions relating to waterworks, sewers, or even public buildings, but there is a strong tendency to discount the value of professional judgment on questions of paving. And in many cases popular prejudices and political passions have had more to do with determining the type and construction of the pavement laid on particular streets than the recommendations of qualified experts.

There are a great many factors to be taken into account in selecting a type of pavement for a particular street and fixing the specifications for its construction. The first is the city plan. Without considering the character of the district in which the street is located and its probable future development in accordance with the city plans, and without knowing something of the nature and volume of

the traffic on the street both present and future, it is clearly impossible to arrive at any intelligent conclusion as to the kind of pavement needed. Other factors that must be given due consideration are the grade of the street on which the pavement is to be laid, the amount of shade on the street, the character of the soil on which the pavement is to be laid, the climatic conditions to which the pavement will be subjected, the probable life of the pavement under these conditions, the original cost and the cost of maintenance and repairs, the ease with which the pavement is cleaned, and the character of the riding surface from the standpoint of comfort and safety. It must be evident that decisions comprehending such numerous and complex factors should not be left to uniformed lay opinion, and still less to designing politicians. No one can lay down a dictum that granite blocks, brick, asphalt, concrete, wood blocks, or any other type of pavement should be adopted in a particular instance without a careful and unbiased study of all the important aspects of the local situation in the light of known facts regarding all kinds of pavement. Questions of this kind cannot be settled by plebiscite, nor even by legislative bodies. Until cities can learn to follow the recommendations of competent specialists in matters of this kind there will be unending difficulty with the paving problem.

Somewhat the same is the question of the order in which streets are to be improved by pavement. The city government in most cities has lacked the courage to face this question squarely and to inaugurate a definite plan for the improvement of streets in a regular order of succession. As a result the order of improvement of streets has been determined by the initiative of abutting property owners or by what municipal politicians have thought expedient

to impose on property owners. The outcome of course has been that the improved streets of the city do not constitute an integrated and well-balanced system, but rather a disjointed scheme of paved streets whose utility is greatly reduced by their lack of organic correlation. This is another matter in which a wise and comprehensive city plan carried out under the advice of experts should govern.

The problem of sidewalk construction is very similar to that of paving. All questions as to the width of sidewalks and the specifications for their construction should be settled with reference to the character of the street and the use of abutting property. It is probably possible to standardize sidewalk construction in accordance with the district of the city in which it is situated somewhat more readily than is the case with paving. Concrete seems to be supplanting all other materials for sidewalk construction, although there are still many conditions under which brick or flagstone may be used with advantage.

The construction of waterworks and sewers.—Aside from matters that belong properly to a technical treatise, there is little that can be said about the problems inherent in the construction of water and sewer systems. The nature of the construction problem in the case of waterworks is largely predetermined by the location and character of the source of supply. If topographical conditions are such that a gravity system is practicable, the construction problem is considerably different from what it is under conditions necessitating a pumping system, and *vice versa*. And if the source of supply is located at a long distance from the city as in the case of New York and Los Angeles, the problems are considerably different from those where the source of supply lies at the city's front door, as in the

case of Chicago and Cleveland. Likewise if the supply is drawn from contaminated sources, thus necessitating purification by filtration or chemical treatment, the difficulties of construction are considerably magnified. The laying of mains and laterals in the city so as to make an ample supply of water available to all consumers is simply a matter of careful planning and good engineering as related to the street plan of the city.

There are two kinds of sewer systems, known as the separate and the combined. The separate system consists of two sets of pipes, one for the removal of storm water and the other for sewage; the combined system carries off both storm water and sewage in the same set of pipes. The combined system is generally regarded as more economical to construct, but it is not regarded as practicable when cities must purify their sewage before its discharge and when certain adverse topographical conditions prevail. The necessity of purifying sewage is the cause of some of the most difficult problems in connection with sewer construction. Cities situated on the seaboard or on large streams and lakes generally discharge their sewage into these bodies of water without purification, but an increasing number of cities, especially inland cities and those which discharge sewage into rivers and lakes, are finding some degree of sewage purification necessary. The extent and nature of the construction necessary for a sewage disposal plant depends upon the process of treatment of purification that is employed.

Miscellaneous construction.—In the construction of public buildings, bridges, viaducts, and the like, each constitutes more or less of a special problem of architectural engineering. Very few cities carry on enough construction of this kind to maintain an architectural depart-

ment, and hence architects in private practice are generally retained as needed. Under such arrangements the city's only assurance of security lies in the employment of men of the very highest professional standing.

The maintenance and repair of public works.—Public works, like all other material things, deteriorate with age, and when they are subject to severe usage the rate of decline is bound to be much accelerated. To arrest the rate of deterioration and thus enable the public to enjoy the use of public works for a sufficient time to justify the original outlay, it is necessary to have a sound policy of maintenance and repairs. When an economy wave sweeps over a city, the curtailment of expenses usually begins with maintenance. This of course is false economy, because money saved on necessary maintenance is not really saved. To refuse to spend the money required for the upkeep and repair of public works simply means that they will wear out prematurely and the city will be obliged to replace them perhaps before it has succeeded in paying for them. And to be niggardly in making expenditures for maintenance means about the same thing, or it means prolonging the life of the improvement by doubled or trebled expenditures for maintenance in its later years. As a basis for maintenance there should be systematic inspection of all public works in order to disclose all of the conditions which need attention. In the case of sidewalks, pavements, street lighting fixtures, and other improvements, the police, who regularly patrol the streets of the city, can perform much of the inspectional work as incidental to their principal duties; but the inspectional work necessary for the proper maintenance of waterworks, sewer systems, and public buildings, must in the main be performed by special inspectors.

A sound maintenance policy is probably of more urgent importance for pavements than for other public improvements, the reason being that pavements are subject to more constant and severe usage than other public works. The life of a pavement is short enough at best, and experience has shown that unless it is properly maintained the money originally spent in laying down the pavement is largely wasted. In fact a pavement is something like the roadbed of a railway that must constantly be kept up for the convenience and safety of the public as well as to conserve the original investment. There are many reasons why cities fall down in the maintenance of pavement. One is the shortsighted economy of politicians who would rather make political capital out of temporary savings (misleading the public to believe them genuine and permanent) than establish a policy which would show enormous ultimate savings at some future time when they might not be in office. Another is the defective administrative machinery common to many of our cities, which makes it impossible to get essential repairs done expeditiously and efficiently. A third is the demoralizing influence of the spoils system upon municipal street repair departments, resulting in an incompetent and corruptible, if not corrupt, organization. Still another contributing cause in many cities is lack of prevision in requiring sewers, water pipes, conduits, and other sub-surface structures to be in before the pavement is laid. The result is that frequent openings of the pavement become necessary, and the impossibility of restoring the pavement to its original soundness after these openings tends to accelerate its decline.

Engineers of extensive experience say that a certain proportion of the original cost of a stretch of pavement (the exact ratio depends upon the type of pavement and

the use to which it is subjected) should be expended each year in maintaining it; and when the cost of keeping the pavement in proper condition exceeds this ratio they declare it is more economical to replace it with new pavement. To follow such a policy of repaving requires a scientific analysis of the paving situation. It is well known that the duration of pavement varies from five to twenty years, depending upon the materials used, its location and construction, and the use it receives. In preparation for a repaving program every paved street should be subjected to careful study to ascertain the probable life of the pavement. Upon the basis of this information a general program of repaving should be instituted, which would call for the replacement each year of the pavement which has passed the point where it could be economically maintained. One of the obstacles to the adoption of this principle of progressive repavement in American cities has been the fact that property owners have objected to the assessment of all or a considerable part of the cost of repaving against the abutting property, as is the case with the original improvement. On the theory of benefit to the property, the justice of assessing a part or all of the original cost of pavement on the abutting property has never been questioned. But in case of repavement the justification for assessment on the property is not so clear. In business districts there is no doubt that repavement confers a benefit upon the adjoining property, though perhaps not commensurate with its cost. But in residence sections repavement adds very slightly, if at all, to the value of the abutting property. The financing of a repaving program should, therefore, fall more heavily upon the general tax rate than is the case with the cost of the first improvement.

The public service functions of a city.—Though not activities of construction or maintenance, there are in every city certain services performed by the city government for the inhabitants that are quite frequently carried on under the jurisdiction of the public works department. The most universal of these are street cleaning, snow removal, the collection and disposal of garbage and other municipal wastes, and street lighting. All of these are matters that were formerly left almost entirely to private initiative, but have now become so vital to the welfare of the city that public action has become necessary. Except for the fact that some of them have a bearing upon the use and maintenance of certain public works and do involve certain technical problems, there is no logical reason why they should be administered by the same department as the construction and maintenance of public works; and in several of the larger cities special departments have been created for these functions. In the smaller cities where such refinement of organization is not practicable they probably can be handled more successfully by the public works department than by any other.

Street cleaning.—Street cleaning is primarily a sanitary measure, but it is also important because of its relation to the serviceability of the streets. There was a time when nearly all cities had their street cleaning done by private individuals or corporations on a contract basis; but this system has been almost universally abandoned because experience has shown that it is next to impossible to draw a satisfactory contract for street cleaning, that the cost of supervising the execution of contracts is excessive, and that outrageous scandals almost inevitably develop in connection with the letting and performance of contracts

for street cleaning. Street cleaning by the city, which has generally superseded the contract system, involves three fundamental elements: (1) a careful analysis of the various influential factors entering into the street cleaning problem in the particular city, (2) the use of the most efficient and up-to-date processes of cleaning, and (3) the development of a well-organized and efficient force of employees to do the work of cleaning the streets.

Before the methods of cleaning most suited to the particular city can be determined and before an adequate organization for street cleaning can be built up, there must be a careful study of each street to ascertain the factors controlling the amount, frequency, and kind of cleaning required. The factors that should ordinarily be taken into account are the kind of pavement and its state of repair, the width of the street, the nature and the density of the traffic on the street, the character of the district in which the street is located, the accessibility of the street to dumps or other points for the disposal of street sweepings, and perhaps the peculiarities of climate to be encountered in the particular city. When these factors have been appraised in their relation to every paved street, it is then possible to evolve an intelligent and inclusive program for street cleaning, and even to establish a definite schedule for street cleaning throughout the city.

The processes of street cleaning most generally employed in American cities are hand sweeping, machine sweeping, flushing, and what is known as "squeegeeing." Hand sweeping is objectionable because it raises a great amount of dust and because it requires a large labor force, but for certain types of work no mechanical process can be satisfactorily substituted for it. This is particularly true when heavy cleaning is required on rough and uneven pave-

ments. There is much controversy about the value of machine sweeping. The opinion of the engineering profession appears to be that while machine sweeping seldom, if ever, gives as good results as hand sweeping, there are conditions under which it gives results good enough to warrant substituting it for hand sweeping on grounds of economy. Where the pavement is relatively smooth and the material to be picked up is coarse, conditions are most favorable to machine cleaning. Flushing is becoming popular both as a means of supplementing sweeping and as a primary method of cleaning. Flushing is done either by using a hose or by using flushing machines. The arguments in favor of flushing are that it is more sanitary, more effective, and more economical than any other type of cleaning. There are of course conditions under which it is difficult to use flushing, and some authorities have asserted that flushing has a deteriorative effect on certain kinds of pavement. "Squeegeeing" is a combination of sweeping and flushing. A "squeegee" has been described as "a vehicle having a tank and a revolving rubber roller, which washes the pavement as the vehicle moves along the street and the water from the tank is sprinkled in front of the roller."[1] The squeegee process is especially effective on smooth pavements, and under favorable conditions is also very economical. A newer process of street cleaning that has not as yet been thoroughly tried out is the vacuum process. Vacuum machines operate on a straight vacuum principle or use the vacuum principle in combination with a pick-up machine broom process. It is thought by many that the improvement of the vacuum process may revolutionize street cleaning.

The character of the organization needed for street

[1]Capes and Carpenter, *Municipal Housecleaning*, p. 29.

cleaning depends upon the nature of the street cleaning problem and the methods of street cleaning that are used. In the business districts and on the busiest thoroughfares much of the street cleaning must be done at night, and this means that the street cleaning force must be organized on a two-shift basis. The type of labor required will be governed by the extent to which machine cleaning has supplanted hand cleaning. When large forces of street sweepers are employed, the usual method of handling them is to divide the city into districts and to assign to each district a force which is to work as a unit. A superintendent, under the direct control of headquarters, is placed in charge of each district, and oftentimes inspectors are placed in each district to check up on the character of the work done and report to headquarters. It has been discovered that the morale and efficiency of the men employed in street cleaning can be markedly improved by giving them a certain amount of instruction and training, and by dressing them in uniforms.

Snow removal.—In most of the northern cities, since the advent of the automobile, the removal of snow from the streets of the city has become a serious problem. It has become customary to keep on the payroll during the winter a substantial part of the street cleaning force for use in the removal of snow. But since there is so much variation in the time and amount of snowfall, it is seldom possible to furnish continuous work throughout the winter to a large force of men. Yet a heavy fall of snow creates an emergency that requires huge operations for a brief time. Most cities have therefore adopted the policy of maintaining a skeleton force and supplementing this by letting out the work to private contractors in times of emergency. Street railway companies are customarily

required to remove the snow from the space occupied by car tracks and business firms and householders to clean the sidewalks in front of their property. The use of the contract system under emergency conditions of this sort is, of course, fraught with many possibilities of defrauding the city, and therefore close supervision of contract work is desirable. The usual methods of snow removal are removal to the side of the street by snow-plowing, carting the snow away and dumping it in waterways or sewers, and sluicing it into the sewers by means of fire hose. Various mechanical methods of snow removal have been tried, but none as yet has come into general use.

The collection and disposal of municipal wastes.—Not until the latter part of the Nineteenth Century was public collection and disposal of garbage, ashes, rubbish, and other municipal waste regarded as a proper function of city government. These matters, as well as sewage and water supply, were left largely to individual initiative; and the result, in the larger cities and towns especially, was a noisome, filthy, and insanitary state of affairs that would never be tolerated in a modern city but was then regarded as a necessary incident to urban life.

The collection and disposal of municipal wastes is carried on either by the city directly or by private persons under contract with the city. The trend at present seems to be away from the contract system, the objections to that system being fundamentally the same as in the case of street cleaning. There are many cities which have some kinds of municipal waste taken care of on a contract basis and other kinds by direct municipal collection, but the tendency is toward the complete municipalization of this function.

There are two major types of collection, known as the

combined system and the separate system. Under the combined system ashes, rubbish, garbage, and other forms of waste are collected together, while under the separate system each is collected separately, or garbage is collected separately and other types of waste collected together. Many arguments are advanced for both systems. In general it may be said that the system used should depend upon the size of the city and the methods of disposal which are used. In the smaller cities which can hardly afford to operate elaborate incineration or reduction plants, to say nothing of the duplication of force and equipment necessary for separate collection, the combined system will be found more suitable unless there are special circumstances dictating the use of the separate system. Cities often have an opportunity to use ashes and rubbish to fill in swamps, tidelands, or other places where it is profitable to build soil, and when such is the case, the separate system is obviously necessary. The combined system is, as a rule, more convenient for householders and much easier to administer. The ability of the larger cities especially to make a profit on the by-products of garbage reduction and the sale of reclaimable rubbish, usually overcomes all objections to the separate system, which of course is essential to those methods of disposal. In a number of cities garbage is collected neither by the city nor by contractors, but by licensed scavengers who do the work in order to obtain the garbage, which they use generally for feeding swine.

Such matters as the organization of the collecting force, the proper types of equipment to use, the time of collection, and the frequency of collection are of importance to municipal executives, but excite little interest outside official circles. Success in matters of this kind consists mainly

in using good sense and following sound administrative principles.

The disposal of municipal wastes is becoming a more complex problem as the congestion of population increases. Dumping is the simplest method of disposal, but it is becoming increasingly difficult to find satisfactory locations for dumping without augmenting the hauling cost to a prohibitive point. It has been found in large cities that ashes have a certain commercial value and can be used to a certain extent for dressing unpaved streets. Hence many cities reduce all irreclaimable waste to ashes and so far as possible use the ashes or sell them. It has been discovered also that much valuable material, such as metal, rags, paper, bottles, and tin cans can be redeemed from rubbish; and a few cities therefore either salavge this material themselves and sell it, or allow private persons to pick over the dumps and charge for the privilege. The incineration of irreclaimable rubbish is the most sanitary and efficient way of disposing of it. The disposal of garbage is undertaken in various ways. Feeding garbage to swine has been widely practiced, and a few cities have established hog farms for this purpose. These ventures have not proved uniformly successful from a financial standpoint. Garbage collected by the city or by contractors is often sold or given to farmers for feeding purposes. Dumping garbage, either on land or in bodies of water, is not widely practiced any more because of the nuisances created by it. Garbage mixed with ashes, rubbish, and other wastes can be satisfactorily disposed of by the sanitary fill method when swamps, tidelands, ravines, or other wastelands are available for that purpose. The burial of garbage by plowing under has been practiced in some cities, but not extensively or with unqualified success

The unsatisfactory character of these more natural methods of disposal has led cities to develop artificial methods of disposing of garbage which are of two general types—incineration and reduction. There is much difference of opinion as to the merits of these two methods of disposal, but expert opinion inclines to the view that reduction can be carried on successfully only in the larger cities where there is a sufficient amount of garbage to produce large quantities of by-products. The technical features of the various processes of incineration and reduction will not be discussed here.

Street lighting.—The illumination of the streets is another municipal service of comparatively recent origin. When the citizen went abroad at night in the American city of sixty or seventy years ago, he carried his own lantern to light his way. The city government probably maintained a few whale oil or kerosene lamps at one or two leading street intersections, but the city as a whole was left in utter darkness. When illumination by gas became practical and economical, street lighting was greatly extended; and now with the perfection of the electric light we are tending in the direction of complete illumination of the streets.

There are two outstanding reasons for street lighting—to check the perpetration of crimes under the cover of darkness and to facilitate the use of the streets at night for traffic purposes. In former times the protection of citizens and the facilitation of the work of the police were the first considerations in deciding the amount and character of the illumination to be provided; but now, with thousands of automobiles nightly plying city streets, the requirements of traffic are of governing importance, and this means that the illumination of streets must be carried far beyond all former standards of sufficiency.

Cities provide street lighting through contractual arrangements with private lighting companies and by the operation of municipal light plants. A few cities operate light plants for illuminating streets, public buildings, and public grounds only and do not sell to private consumers, but as a rule the city plant supplies private consumers and very often has a monopoly of the lighting business in the city. Great difference of opinion exists as to the advantages and disadvantages of these various ways of providing street illumination, but as, in the case of other municipal services, the trend is toward municipalization. When the city secures its street lights by contract the problem is to negotiate a favorable contract and to assure its faithful execution. The chief questions which arise in the formulation of the terms of street lighting contracts are whether the equipment should be supplied by the company or the city, what rates should be charged, how the location of lights should be determined, what standards of service should be specified, what provisions should be made for readjustments during the term of the contract, and how long the term of the contract should be. It is not possible to give categorical answers to any of these questions, and conditions vary so widely that what might be the right answer in one city would be the wrong answer in another, or what might be the right answer at one time would be the wrong answer in the same city at another time. It is because of such difficulties and the equally great difficulties of enforcing lighting contracts that cities are more and more turning to municipal ownership of lighting plants.

From a technical standpoint the problem of street lighting is simply one of supplying the kind and amount of light needed according to requirements of the street to

be lighted. If it is a principal street in a retail district, the problem is one thing; if it is a street in a wholesale district, the problem is entirely different; and if it is a street in a residence district, there is another distinct problem. This by no means exhausts the possibilities of classifying streets for lighting purposes. The science of illumination is now so well advanced that properly qualified experts have little difficulty in determining what facilities are necessary for adequate lighting under all conceivable conditions.

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CHAPTER XI

MUNICIPAL UTILITIES

THERE is no bigger municipal problem than that of public utilities. City life would be intolerable, if not impossible, without modern facilities for providing the inhabitants with water, light, fuel, power, transportation, and means of communication. The imagination cannot picture a modern city without these great community services; and experience has abundantly demonstrated that the cessation or interruption of any one of them causes immediate and extensive inconvenience and suffering. In fact, it is only when public utility services are for some reason suspended that we truly realize their vital importance in the social and economic fabric of modern city life. Without public utility services, domestic life as we now know it in the city could not be maintained.

Importance of public utilities.—Long ago we passed the point where it was possible for each family to provide its own independent water supply; and we are rapidly approaching the time when considerations of convenience, safety, and economy will dictate the complete abandonment of the independent family unit in the provision of light, heat, and fuel. The dependence of the domestic unit upon the street railway and the telephone is proverbial and is becoming progressively more pronounced. In commercial and industrial affairs the indispensability of the major public utilities is quite as marked as in domestic

life. Without street railways, telephones, gas, electricity, and water, the commerce and industry of the modern city would come to a sudden halt, and no individual firm can be self-sufficient in these matters. Since public utilities are so important in the social and economic structure of the city, it must be evident that questions as to the adequacy and suitability of the services rendered and as to the propriety of the rates charged for public utility services must be among the most important problems with which municipal government has to deal. And therefore the political controversies centering about public utilities are of transcendant significance in municipal affairs.

The public utility problem.—Although offering innumerable variations and complexities the public utility problem has two fundamental elements: (1) securing the provision of a supply or service adequate in quantity and quality, and (2) securing rates as low as the adequacy of quantity and quality will admit. It makes no difference what the utility, there is always a service problem and a rate problem. In the minds of many persons the rate problem is the paramount one, probably because of the many acute and spectacular controversies that have revolved about the fixing of public utility rates. Nevertheless it would seem that the most vital problem is that of service. Public health, safety, convenience, and well-being in general are directly and intimately involved in the service rendered by public utilities. If the quantity or quality of the service rendered by the street railway system, the water system, the gas or electric lighting system, or the telephone system is deficient, public welfare is vitally affected, and the public utility has failed in the primary object for which it exists. Service, then, would appear

to be the question of first and foremost concern in the control of public utilities, and the lowest rates consistent with satisfactory service the question of immediate secondary concern.

Public utility policies.—There are two general methods by which cities endeavor to cope with the public utility problem: (1) public control and regulation of privately owned and operated utilities, and (2) municipal ownership and operation of utilities. The former is the historic policy that generally prevails in the vast majority of cities; the second, although not new in the United States, has had only a very limited application. It should be understood that these two policies are not mutually exclusive. Practically all American cities have municipalized one or more of their utilities, but none has municipalized them all. Most contradictory conditions are found everywhere. Municipal ownership is quite extensive in the case of water works and electric light systems, but has made practically no progress in the case of gas and telephone systems. A city that successfully owns and operates an electric light and power plant will eschew municipal ownership of its gas system as one of the devices of the devil; and, on the other hand, a city that stands as an exemplar of the policy of public regulation of privately owned and operated street railways will forsake that policy utterly in regard to its water-supply system, although the problem of regulation may be fundamentally the same in both cases. And there are even greater incongruities. In a number of cities municipal ownership and public regulation are simultaneously applied to the same utility, as in the case of the street railways of San Francisco, part of which are municipally owned and operated and part privately owned and operated; or the electric light and power systems of Cleveland,

where the same condition exists. In New York there is the still more anomalous case of the subways, which are owned by the city and leased to a private company to be operated under public regulation.

The policy of public regulation.—The policy of public regulation is the outgrowth of evils arising from abuse of the almost unrestricted freedom enjoyed by privately owned public utility companies in our early municipal history. The utter lack of public utilities and public utility problems in municipal life during the early part of the last century can hardly be appreciated at the present time. A most vivid description of the municipal public utility situation in that early period was given by Charles W. Eliot, President Emeritus of Harvard University, in an address before the Good Government Club of Williams College, December 17, 1909, when he said in part:

> For example, when I was a boy in Boston, there was no public water supply—none whatever—there was no sewer in the entire town, and no pavement except a cobble-stone pavement in a few streets, a rough pavement made of rounded beach stones. There were no lights to speak of in the city streets—only a few widely scattered whale oil lamps. There wasn't such a thing in the world as a street railway—therefore no question about granting franchises for street railways. No use of electricity was known—no electric lights, no electric transmission of power, no telephone and hardly any telegraphic communication. Consider how absolutely different the business of a city was then from what it is now. Water works, gas and electric works, paved streets, clean streets, sewers, garbage removal, preventive medicine, and schools, carefully organized, well heated and lighted, thoroughly equipped, and inspected by medical officers —all these things we now regard as everyday work for a city. None of these things existed sixty years ago. I have seen pigs running freely through the streets of Albany, the capital of a great state, the only scavengers known to the city.

Naturally there could be no policy regarding public utilities in those primitive times; nor could a well-considered and mature policy be evolved from such conditions. What happened was in substance that as cities grew and the advantage and indispensability of public utility services came to be recognized, any person or corporation who proposed to supply any one of the necessary public utility services to a city was regarded as somewhat of a public benefactor and granted the right to use the streets of the city with practically no regulatory limitations. In the absence of such restrictions and in consequence of the "public-be-damned" policy followed by public utility companies, there arose an almost universal demand for governmental control of public utility companies in such fundamental matters as service and rates. The public utility interests offered strenuous opposition to the policy of public regulation from the very beginning, and have very rarely coöperated with public authorities in a way to promote the success of government regulation. Conditions were such, however, that a vast extension of public control was unavoidable, and gradually public utility interests have become reconciled to the inevitable. And, curiously enough, when in these latter days they are faced with public ownership as the final alternative of public regulation, the public utility interests have become devoted champions of the policy of public regulation, though very often their ardor does not go far enough to cause them to submit gracefully to the strictures of regulation or to give sympathetic coöperation to the regulatory authorities.

On account of the circumstances under which it came into being the policy of public regulation has always been of more or less negative character, looking toward the

elimination or prevention of abuses in the operation of public utilities rather more than toward constructive public control in a big way. So numerous and complex are the variations of detail from city to city that it is practically impossible in general terms to give a satisfactory account of the actual procedure of public regulation. It may be noted, however, that in virtually all cities the most conspicuous ingredients of the process of regulation are the formulation and intepretation of franchises, the determination of rates, and the means of enforcing regulatory restrictions. Brief attention to each of these matters may suffice to give a fair conception of the operation of public regulation.

Public utility franchises.—Although laws have been enacted in several states under which public utilities companies may operate without securing a franchise, it is still generally true that public utility regulation begins with the franchise. In order to understand what a franchise is it is necessary to realize that public utility companies, to carry on their necessary operations, must make special use of the streets and public ways of the city for tracks, wires, poles, conduits, pipe lines, and so on; and since the streets of a city are for the common and equal use of all of the inhabitants of the city, they cannot be subjected to special encumbrances of the kind mentioned by any individual or corporation without a special grant of permission by competent public authorities. In the absence of constitutional provisions to the contrary the paramount and final power to grant such privileges (or franchises) for the use of city streets resides in the state legislature, which may exercise the power itself, delegate it to a state public utility commission, or delegate it to the city council or other municipal authorities. In a great many states

the legislature has so abused this franchise-granting power that constitutional provisions have been adopted taking the power out of the hands of the legislature entirely or forbidding the legislature to grant municipal franchises without the consent of the local authorities.

A franchise as a contract.—A franchise, whether granted by state or municipal authorities, is regarded at law as a contract, and as such is protected by the obligation-of-contract clause of the Federal Constitution against retroactive impairment. Without entering into the historical and legal questions issuing from this fact, it may be remarked that this construction of a franchise grant as a contract has been a serious impediment to effective public regulation of utilities, and has resulted in indirect and often very circuitous devices being resorted to in order to escape its consequences. Franchises granted hastily, heedlessly, corruptly, and without adequate provision of the changing needs of future years become irrevocable and unchangeable, except by their own terms, unless there is some way of circumventing the strict application of the contract clause of the Federal Constitution. In practice there have been two general ways of accomplishing this latter result. The courts have repeatedly held that reservations in the constitution or laws of the state at the time of the granting of a franchise, providing for the future revocation or modification of franchises, would by implication become a part of the terms of every franchise granted during the existence of such reservations, thus subjecting it to subsequent revocation or modification by its own terms. Again, the courts have held that there are certain fundamental powers of sovereignty, notably the police power, which cannot be compromised or granted away by a franchise, and consequently that no reasonable police regulation can

be construed as an impairment of the obligation of a contract. It will be perceived, of course, that the foregoing are very lame and uncertain methods of dodging the consequences of sheltering franchises under the Federal contract clause; because, in the first place, public authorities may lack the foresight to incorporate in the constitution and laws of the state reservations of sufficient scope to cover all necessary future modifications of franchises; and in the second place because of the uncertainty as to whether the police power will warrant certain interferences with franchise rights which may be absolutely indispensable to effective regulation.

The terms of a franchise.—Because of the many different kinds of public utilities, each of which must have its own special and technical franchise terms, it has not been possible to standardize the provisions of public utility franchises. Nevertheless, there are certain general regulatory provisions which are more or less common to all franchises and which can be treated together. Of first interest are the provisions respecting the duration of the franchise. Years ago franchises were frequently granted in perpetuity or for long terms of fifty, seventy-five, or ninety-nine years; but these long grants were so manifestly incompatible with effective public regulation that they are no longer in vogue. The short-term franchise, on the other hand, has proved to be almost equally objectionable, because of the difficulty of inducing private capital to seek investment in utility companies having a brief lease of life, and because of the temptation of the companies, owing to the shortness of their tenure and the uncertainty of renewal, to sacrifice service to immediate profit. As an alternative, many authoritative students of the matter prefer the indeterminate franchise, terminable at will by

the city in case of violations by the company and at stated periods if the city should desire to acquire the property itself.

Every franchise should contain adequate provisions reserving to the public regulatory authorities ample power in such matters as prescribing and enforcing standards of service, protecting consumers, requiring satisfactory accounts and reports, as well as any other matters relative to the health, safety, welfare, and convenience of the public. The specific nature of these provisions must in each case be governed by the technical character of the particular utility. Another thing that every franchise should contain is a provision fixing rates or establishing a method of fixing and adjusting rates from time to time. The latter is preferable because it avoids the dangers of a set and unalterable charge for public utility services. Because of the close correlation between rates and the capitalization of the company, a wisely drawn franchise will contain provisions authorizing the public authorities to regulate the capitalization of the company and all increases or changes thereof. To facilitate public supervision and control of the affairs of the company, the franchise should also contain provisions requiring regular and special reports to the public authorities according to forms prescribed by them and supplying information demanded by them; and there should also, perhaps, be provisions requiring full publicity regarding the financial affairs of the company. Many other essential provisions might be suggested, but the ones mentioned are probably the most fundamental.

The regulation of public utility rates.—The rate question is an exceedingly complex one and only a few of its more salient aspects may be reviewed in this summary.

Rates are established in several ways. Quite commonly they are the result of a contract between the city and the company, either as one of the terms of the franchise or as the product of a mode of rate-fixing set up in the franchise. When rates are fixed in this way it is more difficult to find a basis for challenging them in the courts than when they are established by the fiat of a state legislature, a city council, or a public utility commission. In the case of rates being fixed by legislation or by administrative order, the courts take the position that it is a violation of the due process clause of the Fourteenth Amendment to the Federal Constitution if the rate does not allow a reasonable return upon the investment of the company. The determination of what is a reasonable rate of return is not merely a question of law, but also an intricate question of economics and corporation finance, which the courts have been utterly unable to solve. It is on this account that permanent commissions or boards have been established with authority to regulate public utilities and fix rates. The operation and procedure of these anomalous bodies which exercise legislative, administrative, and judicial powers is a field of study in itself and entirely too big for treatment in this connection.

Entirely aside from questions of legality and procedure in rate-making there are other difficult questions. Assuming, if you please, the obligation of the public to pay rates which will provide for a reasonable return on the investment, the question immediately arises, "How can the dividing line between fair and reasonable rates and unfair and confiscatory rates be drawn?" Three, four, and five per cent. are generally considered fair and reasonable rates of return on money in savings banks or invested in government securities, but the probabilities are that those rates

of return would be held unreasonable and even confiscatory in the case of public utilities. If so, then why should a higher rate of return be allowed on public utility investments and how much higher should it be? These are difficult questions to answer, and wholly satisfactory answers to them have not as yet been evolved by public utility commissions or even by public utility companies themselves. Nevertheless, before rate-fixing can be undertaken, such a minimum rate of return must be established.

After the determination of the rate of return which is to be regarded as fair and reasonable there remains the far more difficult problem of deciding the basic investment to which the rate is to be applied. The financial promotion of public utility companies has been of such dubious integrity as to shatter public confidence in the capitalization claimed by the companies themselves. Fictitious capitalization by means of the well-known corporate practice of "watering the stock" has been so common among public utility companies that public authorities have felt obliged to undertake a valuation to determine the actual investment as a necessary prerequisite to rate-making. Valuation is a highly technical process which requires the judgment of experienced experts.

Assuming all of the foregoing difficulties to have been surmounted, there are still a number of perplexing problems involved in rate-making. There is, for example, the matter of the relation of rates to the use of the service or commodity furnished by the utility company. In many cases there is apparently a point beyond which rates cannot be raised without greatly curtailing the use of the utility. When that is the case the question arises as to whether it is not wiser from the standpoint of public

policy to keep rates low enough to encourage more extensive use of the utility. It is found also that in many cases there is a point beyond which rates cannot be increased and yield a proportionately increased return to the company; and, in a few instances it has been found that raising rates to a certain extent instead of increasing the return actually reduces it. It is a problem of no little importance, then, in fixing utility rates to fix them at the point which will produce the maximum return and the most extensive use of the utility. Another important decision in setting up rates is whether to adopt a flat rate or a graduated rate. The latter has proved eminently successful in charging for water, gas, and electricity, while in the case of street-car fares and telephone rates its success has not been unqualified. The graduated rate is supposed to possess the virtue of furnishing an incentive to economy in the use of the utility and of being fairer to each individual consumer; but there undoubtedly are times when it acts as a penalty and discourages use of the utility. A further question that should be considered in the establishment of rates is whether rates cannot be fixed in such a way as to induce the company to effect economies in operation, improve its services, and at the same time operate on lower rates. The so-called sliding scale plan has been introduced in a number of places with this end in view. The basic principle of this plan is that the rate of return allowed the company shall vary so that as the company effects economies and improvements and reduces rates its rate of return on the investment shall be increased.

Methods of enforcing public regulations.—The history of public utility regulation discloses two principal methods of enforcing upon public utility companies regulations in

the public interest. The method which first developed was the enforcement through the courts of the enactments of legislative bodies. The weaknesses of this method, which have led to its virtual abandonment, are that ordinary legislative bodies are rarely capable of acquiring and mastering the vast body of technical information necessary to the formulation of intelligent and effective public utility regulations, and that the courts, being similarly handicapped regarding the technical aspects of public utility regulation, are in addition so dilatory and strictly legalistic in their processes that they are not properly qualified to interpret and administer public utility law. The alternative to this method of regulation, that is now very widely adopted, is administrative regulation through the agency of a board or commission. The chief points of superiority claimed for this method as contrasted with the other are: (1) the possibility of expert regulation by a body of men chosen for their fitness for this particular work and devoting themselves exclusively to it; (2) the possibility that with a body of specialists devoting all of their time to public utility regulation no decisions will be made or action taken without all of the essential fact data on the subject; (3) the possibility of dispensing with the formalities or procedure necessary in judicial and legislative bodies and acting according to a few simple rules that would greatly expedite legislation; (4) the possibility of inaugurating and carrying forward over a period of years a comprehensive and consistent program of public utility regulation.

Whether the regulation of municipal utilities should be committed to the state public utility commission or should be assigned to a municipal public utility commission is the subject of much difference of opinion.

Owing to the ever-increasing number of utility companies which serve more than one city and to the necessity of maintaining a large and competent technical staff, which none but the very largest cities can afford to do, it is urged that the state commission should regulate all municipal utilities. It is also pointed out that only a state commission can procure that uniformity of accounting and reporting which is essential to the production of valid comparative data regarding experience in various cities. On the other hand, it is claimed that state commissions tend to be indifferent to local needs and problems, and often impinge upon the proper domain of local self-government. It is also contended that state public utility commissions are more susceptible to the political pressure of the public utility interests than local commissions would be.

Public regulation *vs.* public ownership.—After many years of experience with the policy of public regulation, there is a constantly growing number of people who believe that it is destined ultimately to be succeeded by the policy of municipal ownership and operation of all public utilities. Conservative public opinion, however, still inclines to regulation as the only sound policy in dealing with public utilities, though readily conceding that much remains to be accomplished in the way of perfecting methods of regulation. And there are numerous persons who regard public ownership as not only impractical and visionary, but dangerously radical. The issue between the two policies is therefore fairly joined, and the battle between them is being carried on with greater or less intensity in every city of the country. It would be premature to prophesy ultimate and complete victory for either one, but it will not be amiss to point out that in

recent years the gains have nearly all been on the side of municipal ownership and that the present trend seems to be in that direction. A summary review of the principal arguments advanced on both sides may be helpful to the reader in following the course of the struggle.

The case for public regulation.—The case for public regulation is based upon the contention that public ownership is unsound in both theory and practice. It is asserted that under public ownership municipal utilities would be plunged directly into politics and would be subject to every demoralizing influence known to municipal politics. It is claimed that under municipal ownership it is impossible to command the services of the trained specialists and technicians who are indispensable in the successful operation of public utilities, because such persons will not accept positions where they are bound to be subject to political influences. It is maintained that labor under municipal ownership is less efficient than under private management, and cannot be restrained from using its political power to influence conditions of work and wages. It is said also that because there is no profit-making motive as an incentive to economy the administration of public utilities under public ownership is extravagant and wasteful. Public regulation of privately owned and operated utilities, on the other hand, is said to combine the advantages of private initiative and business management with public supervision for the preservation and promotion of public interest and welfare. And it is held that this system insures the operation of public utilities by competent business men and technicians uninfluenced by any political considerations, but primarily concerned with efficient management in order to produce a profit.

The case for public ownership.—The champions of public ownership charge that private ownership subject to public regulation has been a complete failure. The counts in the indictment are numerous. Despite public regulation, it is alleged, privately owned utilities thrive by the exploitation of the public. The dominant motive with private management is said to be to return a profit on the investment, and to that end all else is sacrificed. Fraud is perpetrated upon the public by fictitious capitalization upon which high rates are charged and higher rates asked; poor service is rendered and the quality of the service is deliberately allowed to deteriorate whenever that will enchance the profits; illiberal labor policies, pursued in order to keep labor costs down and swell profits, result in numerous strikes and other labor troubles which interrupt the service and cause great inconvenience and suffering to the public. These and numerous other evils, so it is said, the regulatory agencies of the public have not been able to prevent or eliminate, despite the huge staffs of inspectors, accountants, and experts of various kinds that must be maintained for that purpose. At bottom, it is claimed, there is a fundamental incompatibility between public interest and private interest which no amount of public regulation and supervision can successfully overcome. Public interest demands the maximum of service at the minimum cost, while private interest requires the minimum of service at the maximum cost in order to make the largest possible profits. These divergent objects and motives, it is declared, will always result either in the failure of regulation, in which case the public interest will be disregarded, or in the failure of the companies under effective regulation to make those profits which are necessary to sustain their credit and render

their securities attractive to the investing public. On the other hand it is argued that the policy of public ownership has all of the merits which the policy of regulation lacks. Since the profit-making motive does not exist under public ownership, good service will become the primary purpose of operation, and since it is not necessary to make profits good service can be rendered more cheaply under public ownership than under private ownership. Also, because the public can borrow money more cheaply than private corporations, it is contended that the amounts payable to amortize the debts created by the original investment will be less under public ownership than under private ownership, and that this will be reflected in the rates charged. Labor troubles will be largely eliminated because the public can afford to pay better wages and provide better working conditions than a private corporation. Another argument for public ownership is that it will eliminate the corrupting influence of private utility companies in municipal politics, and thus greatly contribute to the purification of public affairs.

The problem of local transportation.—The storm center of the public utility controversy during the past decade has been the problem of local transportation. Not that big issues have not arisen in regard to other utilities, but in the case of street railways the difficulties have been so uniquely dramatic and provocative that they have overshadowed all other utility questions. In most cities the local traction system is the product of a generation or more of altogether ill-contrived and misguided development. There are few, if any, cities in which a system of local transportation has grown out of a well-matured plan faithfully followed throughout a series of years. On

the contrary, the growth of the street railway net has been Topsy-like, entirely unsystematic and disorderly. Beginning perhaps as far back as the day of the primitive horse-car, municipal street railway franchises have been granted with little thought of the future transportation needs of the city, and not infrequently they have been granted carelessly and corruptly. A franchise to operate on one street or group of streets would be given to one company and similar franchises to other companies to operate on other streets or groups of streets, and sometimes the number of independent street railway systems thus established mounted to a dozen or more. In granting these franchises little precaution was used to incorporate in them terms and conditions that would protect the public in the matter of the service rendered and the rates charged. For reasons too complex and too numerous to mention here there came eventually a movement to consolidate these separate and often competing systems, and in almost every city there finally emerged one or two operating companies with new franchises or with contractual rights based on old franchises that had remained unextinguished. It must be understood that this process of integration was a slow development, and was accompanied by more or less effective attempts to bring street railways under public control. In connection with the interpretation, extension, renewal, or modification of franchise incident to the unification of street railway facilities opportunity was often taken to establish the right of public authorities to regulate to a degree at least the services rendered and the rates charged by the companies, and often statutes were enacted by the state legislature confirming and enlarging the regulatory power of cities. This public control was of great variety both as to extent

and form, but from the standpoint of the present crisis in local transportation the most important phase of it was public control of street railway fares.

At some time and in some way five cents came to be universally accepted as the right rate of fare to be charged by street railways. The public accepted it as just and equitable, although it is not recorded that it was ever justified by an inquiry as to its relation to the cost of production or rate of return on the investment. It seemed to be eminently satisfactory to the street railway companies, and indeed during the Johnsonian crusade against a five-cent fare they were glad to fortify their position on the five-cent fare by accepting it as a franchise stipulation which could not be changed without the consent of the municipal or state authorities. In a few brief years the situation was entirely changed. The slow climb of commodity prices which had been going on for two or more decades was immensely accelerated by the outbreak of war in Europe, and by the end of the war prices stood from 100 per cent. to 200 per cent. above the levels of 1914. This necessarily precipitated a crisis in the street railway industry. With all costs doubled or trebled, the street railways were in a much more serious plight than other utilities because more than any other utility they had built up on an absolutely inflexible rate a complex financial structure consisting of "fat underlying leases, gilt-edge first mortgages, guaranteed stock, operating companies, holding companies, super-holding companies." With the shrinkage of the nickel this inverted pyramid threatened to topple over. Since the fare could not be increased, the only alternatives from the standpoint of the companies seemed to be to economize by reducing the quality of the service, cutting down expenditures for

maintenance and renewal of equipment, postponing extensions of service, and so on.

In virtually every city of the country there occurred an acute traction crisis between the years 1914 and 1920, and in a great many cities the critical period has not yet passed. Urgent appeals for relief were made to city councils, public utility commissions, and state legislatures; and finally the situation assumed the proportions of a national crisis to such a degree that on May 31, 1919, the President, at the instance of the Secretaries of Commerce and Labor, appointed the Federal Electric Railways Commission to investigate the whole street railway problem and make recommendations for its solution. The conclusion of this body, after taking testimony for several months, was that the most promising way out would be the general adoption of the so-called service-at-cost plan of street railway regulation. Meanwhile various expedients were being tried. Seattle, Detroit, and one or two smaller cities cut the Gordian knot by purchasing their street railway systems from the private owners and embarking on a program of municipal ownership and operation. A few cities were able to maintain the five-cent fare by stubbornly resisting all attempts at modification and insisting upon the introduction of various economies of operation on the part of the companies and sometimes upon a valuation of the company's property as a condition precedent to any increase of fare. In a great many places a temporary increase of fare was brought about either by the consent of the local authorities or the intervention in some manner of state authorities. And a number of cities did turn toward the service-at-cost plan and either adopted it or took steps to do so.

Since it seems to be agreed that the service-at-cost plan

is the soundest system of public regulation and probably the only alternative to municipal ownership, we should give that plan passing consideration. The service-at-cost plan originated in Cleveland in 1910 in the settlement of the long-continued battle between Mayor Tom L. Johnson and the traction companies over the issue of the three-cent fare. The principles of the settlement as laid down by the arbitrator, Judge Tayler, and embodied in a franchise ordinance by the city council were that the street railways should be granted a fair and fixed return on their investment and that transportation should be furnished to the public at the lowest fares compatible with the security of the property of the company and the certainty of a fixed return thereon. To effectuate this principle a sliding scale of fares was set up within the limits of which the actual fare collected was to be made to vary from time to time so as always to produce a "fair and fixed" return on the investment. The somewhat complicated method by which this was accomplished need not be described here save to say that a valuation of the company's investment was agreed upon and the company was to be allowed always a return of six per cent. upon that capitalization. Certain sums were to be allowed for maintenance, depreciation, renewals, operation, taxes, and interest; and when the revenues were insufficient to cover these items and permit the agreed return on the investment, the fare was to be advanced a step on the scale, and when they were more than sufficient, the fare was to be reduced a step.

Thus it will be seen that the service-at-cost plan is predicated upon the following assumptions: (1) that a fair and accurate valuation of the property of the company can be arrived at; (2) that the capitalization of the

company can be so regulated by public authority that it will not exceed such a fair valuation; (3) that a fair and non-fluctuating rate of return can be established; and (4) that the management and operation of the company can be so efficiently supervised that the cost items can be kept at bedrock figures. Whether these assumptions can be realized in practice is a matter for experience to demonstrate. The crucial factor in the service-at-cost plan is the valuation of the investment which is to be employed as the basis for adjusting rates. Satisfactory standards of valuation have not yet been evolved, and the fictitious capitalization of street railway companies in the past has been so notorious as to destroy public confidence in almost every process of valuation. The question of whether a fixed and perpetual rate of return can properly be established is also one for careful study, because invested capital naturally tends to flow toward the highest rate of return consistent with reasonable security, and a fixed rate of return in a time when money rates were ascending sharply would tend to destroy the credit of the company. Yet any departure from the absolutely fixed rate of return does violence to the service-at-cost principle and will destroy public confidence in it. A criticism that is very generally leveled against the service-at-cost plan is that it furnishes an incentive to extravagance in the operation of street railways because the cost of operation is a charge against the public and not against the profits of the company, and that consequently operating officials have no motive to strive for economy. In sum it must be said that the service-at-cost plan is still in the experimental stage, and it may be some years before there is a sufficient body of unchallenged data to warrant definitive conclusions.

As to municipal ownership and operation of street railways our judgment must be even more inconclusive. The three major experiments are in San Francisco, Seattle, and Detroit. In San Francisco the municipal lines comprise but a small part of the aggregate street railway net and are operated in competition with the private lines. It is not, therefore, possible to say what would have happened had the city been operating all of the lines. The Seattle venture was unfortunate in its beginning and conclusions at this time would be premature. There has been an auspicious beginning in Detroit, but it is too early to venture final conclusions.

The other major utilities and their problems.—In addition to street railways the most important municipal utilities are electric light and power systems, telephone systems, gas supply systems, and water supply systems. Each of these furnishes its own peculiar public problems.

As to electric light and power systems we seem to be in a period of transition from private to public ownership. Not that public ownership bids fair to become universal, but that it is supplanting private ownership with tremendous rapidity, especially in the smaller cities. Under public ownership, of course, the great problem is to achieve that technical proficiency of operation which, combined with genuine economy, will give to the consumers the best possible service at the lowest possible cost. Under private ownership, however, the city must exert the utmost regulatory authority to conserve public interest in the matter of fixing rates in relation to the cost of production and distribution of current, to prevent unfair discrimination as between consumers, to secure the prompt and adequate extension of service as demanded for the convenience of consumers, to control the setting of

poles, stretching of wires, and laying of conduits in the interest of public safety and convenience, and to promote public welfare in numerous other matters of perhaps lesser importance.

The telephone is one of the newest of public utilities, and one of the most important. Inherently more monopolistic than any utility, save possibly waterworks, and more difficult to regulate than any other, the telephone has remained exclusively under private control. Having passed through an era of intense competition among municipal telephone companies, we are now entering upon a period of monopolistic operation unparalleled in the utility field. For all practical purposes the telephone systems of all of the larger cities are but units of a national telephone system controlled and operated by the American Telephone and Telegraph Company and its local subsidiaries. This fact together with the innate peculiarities of the telephone as a public utility has resulted in an extraordinarily difficult problem of regulation. Rates and service are of course the two prime considerations in telephone regulation. The rate problem is complicated by several factors that are not found in other utilities. The initial investment required is relatively much smaller for the telephone than other utilities, and perhaps the cost of upkeep and operation is relatively not as large if the volume of business remains stationary. But contrary to experience in other utilities, the cost of operation increases disproportionately as the volume of business expands—a fact which greatly complicates the rate-fixing problem. Then, too, there is no satisfactory way of measuring the service and charging the consumer accordingly, as there is in most other utilities; and furthermore, the service is not altogether a local service. On the

side of service the difficulties are quite as great. The necessary correlation of local with long distance service, the practical impossibility of checking on the quality of the service, the difficulty of compelling improvement in the quality of service all render telephone regulation one of the most difficult tasks of municipal government.

Gas has ceased to be of great importance in lighting, but is assuming constantly increasing importance as a fuel. Therefore, the problem of municipal government in regulating the gas business, which is everywhere under private control, is to maintain adequate and constant pressure of gas with the proper heat-giving qualities, and to secure fair and equitable rates. In regard to artificial gas, this is not a problem of peculiar intricacy, but with natural gas it is difficult, owing to the uncertainty of the supply and the fact that it usually is brought from a distance beyond the control of the regulating authorities. The matter of extensions of service is also important, and also the enforcement of regulations to safeguard the consumer against the hazards involved in the use of gas and the community against the nuisances arising from its distribution.

The one utility that has become almost universally municipalized is the water-supply system, and the city without a municipal water system to-day is considered almost an anachronism. The reasons for the municipalization of water supply are of course the vital importance of the water supply in sanitation, public health, and fire protection, and the undue coercive power that private persons controlling the water system would have over the people of the city. This is not the place to discuss municipal administration of waterworks. That is a problem of itself and largely one of engineering and account-

ing. Under private ownership the effective regulation of the water company or companies is of course a matter of transcendent importance. It involves the fixing of standards of purity and palatability and enforcing them upon the company, regulating the size and structure of the pipes and conduits as well as the pressure to be maintained in them, determining the location and character of standpipes, reservoirs, trunk lines, etc., securing proper extensions when necessary, and maintaining just and fair rates.

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CHAPTER XII

PUBLIC WELFARE

NOTHING is so eloquent of the contrast between the city of to-day and its predecessor of, say, seventy-five years ago as the multitude of things done by the modern city to ameliorate the conditions of social and economic life among its inhabitants—things which were formerly considered wholly beyond the proper sphere of governmental activity. Comment on our transition from an individualistic to a paternalistic conception of the functions of government has become so trite that there is no need to dwell upon that topic at any length. Suffice it to say that the steadily increasing helplessness of the individual, under the adverse conditions incident to the transformation of this country from a rural to an urban and from an agricultural to an industrial basis, has been chiefly responsible for our repudiation of the *laissez-faire* doctrine of government. In the modern social and economic order, government has been compelled to look after the personal welfare of the individual to an unprecedented degree, because the conditions of life have become so complex that the individual can no longer safeguard his own welfare. What is necessary for the welfare of individuals is, of course, necessary for the welfare of the public, and therefore those governmental activities which are carried on primarily to protect, conserve, and promote the personal well-being of individuals may properly be

called public welfare activities. Since the city comes into more intimate contact with the individual than does the state or the nation and since the individual in the city is more in need of the ministrations of government than the individual in the country, municipal government is especially and increasingly preoccupied with public welfare activities.

The extent of municipal public welfare activities.—It would be difficult to make a complete catalogue of the public welfare activities carried on by American cities, but there are several types of ameliorative endeavor on the part of cities that are well-nigh universal. Practically every city is to some extent engaged in activities that have to do with the protection of the health of its inhabitants and the preservation and improvement of their physical well-being. Closely allied to these are the activities that have as their purpose the betterment of the individual by furnishing him proper facilities for recreation, both physical and mental, and by the regulation of his recreational life. Nearly every city nowadays devotes much money and effort to the care and treatment of persons belonging to the dependent, defective, and delinquent classes, and it is sometimes predicted that the day will eventually come when private charity will be superseded by public responsibility for the sub-normal and unfortunate members of society. Of late years cities have come to be occupied with numerous activities relating to the housing of their inhabitants, activities that pertain to the extent and adequacy of housing facilities as well as to the fitness of houses for use and habitation. Still another group of welfare functions includes all those activities of the city government whose principal object is to protect the individual against fraud and economic

oppression. Briefly, it may be said that in nearly all matters concerning the personal well-being of its inhabitants that were formerly left to private initiative the city has come to assume extensive and direct responsibility. For it has come to be apparent that in the modern city individual welfare and community welfare are inseparable, and that individual welfare cannot be assured without community action.

The waste of life in the modern city.—One of the striking characteristics of the modern city is the prodigal and terrible way in which it consumes human life. Despite all of the progress in the reduction of urban mortality rates that we have witnessed in recent times, the city is still enormously destructive of human life and health. And the tragedy of it all is that the conditions which cause this cruel decimation of the population in our cities are very largely preventable. Authorities have frequently asserted that from a fourth to a third of the deaths that occur annually in our cities are attributable to causes that can be entirely eliminated; and the same thing must be equally true of sickness and accidents that do not result fatally. The underlying causes of this waste of human life and vitality with its attendant misery and woe and its resultant economic losses both to the individual and the community may be summarized as follows:

(1) The ravages of contagious, infectious, and other communicable diseases, which are especially dangerous under urban conditions.

(2) Insanitary living and working conditions that contribute to the virulence of communicable diseases and constitute one of the basic causes of nearly all forms of disease; and likewise the extensive consumption of impure and infected foods.

(3) Conditions uncongenial to the health and development of children.

(4) The blighting effects of industrial diseases and accidents.

(5) Premature physical deterioration owing to unhealthy and artificial modes of life and to ignorance of hygienic and wholesome ways of living.

To preserve and promote public health the city government must undertake to combat all of these deleterious forces.

The prevention and control of communicable diseases.—The great pestilential diseases that have from time immemorial afflicted the human race have one by one so far yielded before the advance of science that if they are not all curable, they are at least nearly all preventable. No longer do we need to fear periodic scourges of cholera, smallpox, typhoid fever, typhus fever, yellow fever, diphtheria, and so on. There are now entirely practicable methods of curbing the ravages of these great epidemic diseases, and even tuberculosis and syphilis, ancient archenemies of mankind, can be subjected to effective control. The problem of combatting communicable diseases is, therefore, not so much one of discovering adequate scientific measures to counteract these diseases as it is one of devising legislation and administrative machinery that will bring about the effective operation of those scientific measures that we already know to be successful.

The first step in dealing with contagious and infectious diseases is to obtain a body of law that authorizes the procedure necessary from a scientific standpoint to prevent or control such diseases and at the same time meets the requirements of the local situation. It will be re-

membered that the conservation of public health is not exclusively a municipal function, but is in fact primarily a state function, and the municipality and its health officials act in a dual capacity in dealing with matters pertaining to public health. Municipal ordinances on the subject of public health are usually supplementary to the state health code, and the latter, in its broader terms at least, is designed to apply to cities as much as to other parts of the state. To evolve a satisfactory body of public health law is consequently a matter of nice adjustment between the state and its local subdivisions, and this is so difficult to bring about that not infrequently there are awkward and troublesome gaps between the two, as well as serious overlappings and conflicts. What should be the specific content of an ideal body of legislation for the suppression of contagious and infectious diseases is a subject that none but a professional authority on public health is competent to discuss. In general it may be said that it should contain ample authorization for the abatement of nuisances and the eradication of all noisome and insanitary conditions; that it should provide for the compulsory isolation of persons having contagious or infectious diseases; that it should sanction the measures necessary for the immunization of persons who have been exposed to such diseases or who are in imminent danger of being exposed; that it should compel practising physicians to coöperate with the health officials in the enforcement of health laws and regulations by reporting diseases, deaths, and births; and that it should set up administrative machinery competent to carry out the health laws and to exercise justly and efficiently large discretionary powers which must of necessity be vested in health officials; and to administer hospitals and other

institutions established for the promotion of public health.

The process of dealing with tuberculosis is somewhat different from that of handling strictly contagious diseases. As regards persons already afflicted with the disease, the law should require physicians to report all cases promptly to the health department and to make periodic reports on the progress of each case. By compiling and recording data of this character, the city health officials can be currently informed as to the prevalence of this disease and the extent to which it is spreading, and thus can appraise the effectiveness of their efforts to check it. For the patients who have the wisdom and the means to procure the services of a reputable and competent physician and who follow the prescribed course of treatment, there is little that the city can do. But for the much larger number of people who are too ignorant or too poor to provide adequate medical service for themselves (and it is this class of people that is most susceptible to the ravages of tuberculosis) the city can do a great deal through such means as free dispensary service, public health nursing service, and sanatoriums for the care of those who cannot go to private institutions or be cared for properly in the home. The prevention of tuberculosis is mainly a matter of educating the public in regard to wholesome and hygienic standards of living and of eliminating those insanitary and devitalizing conditions of life and labor that are favorable to the spread of the disease.

The control and prevention of typhoid fever is principally a matter of sanitation. The sanitary precautions in this case have to do chiefly with food and water supply, but in order to prevent the spread of the disease extreme

precaution in the bedside treatment of patients is necessary. It is therefore important for all cases to be promptly reported to the health authorities of the city, so that they may enforce the requisite sanitary precautions at the bedside and may prevent the discharge of persons who are carriers of the typhoid germ.

Venereal diseases present a different problem still. Because of the social stigma attached to those diseases and the unenlightenment of most people regarding proper methods of treatment, as well as the duration and cost of proper treatment, persons afflicted with these diseases are prone to avoid reputable practitioners and seek the counsel of quacks and fakers. The first task of the city is therefore to secure legislation that will drive out these fraudulent parasites and thus place the treatment of venereal diseases in the hands of honest and capable physicians. These diseases should be made reportable and physicians failing to report them should be subjected to severe penalties. Public control will be defeated at the very outset unless complete and prompt reports from physicians can be obtained; for it is only through these reports that the health department can maintain a check on the activities of medical practitioners and can procure information as to the dissemination of these diseases. Another difficulty is to induce those persons who endeavor to get along without any medical attention or because of unfortunate experiences with unethical practitioners are distrustful of all private practitioners, to seek proper medical treatment. Much has been accomplished in this direction in some cities by the operation of clinics by the health department. The big thing in combating venereal diseases is education. The so-called "conspiracy of silence" must be broken down, and the

public must be frankly taught not only how to obtain effectual treatment, but the dangers of venereal diseases, how they are transmitted, and how they may be avoided. Many city health departments have had conspicuous success with educational campaigns of this character.

The question of organization for public health administration has been a very difficult one. The first difficulty encountered is that of the relation between the local health authorities and the state authorities. In a number of states the municipal health officials, so far as their legal powers are concerned, are little more than subordinate units of the state department of health, subject, except for minor matters, to its constant direction and supervision. But with entire disregard for consistency, this legal centralization has not been accompanied by a corresponding centralization of administrative machinery. City health authorities are locally chosen and only in rare instances are they subject to direct and effective administrative control by the state department of health. Thus we have the anomalous situation of local health authorities being legally obliged to execute the health laws of the state under a central department which has few, if any, direct administrative expedients for compelling compliance with its regulations and orders. This disintegration of administrative machinery goes far toward vitiating the advantages which might be expected to result from centralization of legal authority. Other states have proceeded on the theory of allowing a large degree of local autonomy in health administration, and consequently the powers of the state department with reference to local authorities are mainly advisory, except in cases of great emergency when it may exercise direct executive powers in the suppression of state-wide epidemics or in preventing

the contamination of water supplies or some other activity of palpably general importance. How the health department itself should be organized is another question that has been the source of some difference of opinion. The older scheme of organization was a board made up of physicians or of physicians and laymen combined. The members of the board, devoted but a small part of their time to the work of the board, and all matters of routine administration were under the secretary of the board, who was a full-time official and was not necessarily a physician. Because of lack of vigor and initiative in administration and also because their composition was almost invariably determined on a political basis, boards have been very largely supplanted by health departments with a single commissioner, superintendent, or director as executive head. The commissioner of health is usually appointed by the chief executive of the city, and where the chief executive is an elected mayor it has too frequently happened that the appointment has been made on a political basis primarily. It cannot be stated too emphatically that the health department above all others should be free from the taint of politics. On account of the tremendous discretionary powers with which the head of the health department is invested there has been some reluctance to surrender the board form of organization because of fear of one-man power. This objection can be met by establishing an advisory council of physicians for the department of health with power to participate in the formulation of rules and regulations but with no administrative authority.

Regulation of sanitary conditions and food supply.—The connection between public health and sanitation is so direct and intimate that cities as a rule have readily

gone to great lengths in improving sanitary conditions and imposing upon their inhabitants stringent restrictions for the promotion of sanitation. The same is true of the prevention of the sale of impure and deleterious foodstuffs. Sanitation begins with water supply. American cities have expended many hundreds of millions of dollars to provide their inhabitants with an ample supply of pure and palatable water, and some of the most monumental feats of engineering in modern times have been accomplished in the construction of municipal waterworks. Cities which have remained dependent upon private companies for their water supply have probably been more vigilant in the regulation and control of water supply than of any other utility. Sewerage and sewage disposal are the second important element in municipal sanitation. The construction of sewers is essentially an engineering matter, but the extension of sewer lines to unsewered parts of the city is a matter in which the health department should have a voice. The power to compel property owners to connect with sewers is also one that may properly be reposed in the health department. The treatment of sewage before its final discharge has become necessary because our population has become so dense that it is no longer possible to discharge unpurified sewage without contaminating the source of water supply of some city, if not the city discharging it, or in some way creating a nuisance. Whether the city should attempt absolute sterilization of its sewage before discharge is a debatable question. While there may be doubt as to whether complete purification is possible, it is quite generally agreed that the requirements of sanitation do not ordinarily demand such a high degree of purification. The adoption of any of the numerous processes of purification, as screen-

ing, sedimentation, septic tanks, or electrolysis, will depend, therefore, upon the amount of purification required and the peculiarities of the local situation. The assumption by the city of the function of collection and disposal of garbage and other waste materials is a sanitary measure as much as a service rendered for public convenience and comfort. And the numerous ordinances and regulations restricting the freedom of individuals in disposing of waste matter are based almost entirely upon sanitary grounds.

To protect their inhabitants from the dangers incident to the use of filthy and infected foods, cities have been forced to adopt severe and comprehensive ordinances regulating the quality of foods sold within their boundaries and to enforce these regulations by means of vigilant and thorough inspection of foodstuffs offered for sale. From a public health standpoint milk is probably the most important food that is distributed in any city. This is true because milk is indispensable in the diet of children and sick persons, and because typhoid fever, tuberculosis, and other dangerous diseases are readily disseminated through the contamination of milk. The usual steps in effecting municipal control of the quality of the city's milk supply are: (1) to forbid by law the sale of milk and milk products within the city without a license issued by proper municipal authorities, this license to be subject to revocation at any time for violation of regulations imposed upon dealers by the city; (2) to require milk and milk products to be produced and sold under prescribed conditions of cleanliness and to provide for inspection of sufficient frequency and thoroughness to insure compliance with such stipulations; (3) to forbid absolutely the sale of milk and milk products that do not

make a specified score based on bacterial count and other standards of quality; and (4) to provide for frequent laboratory tests of typical samples obtained in due course of trade of all kinds and grades of milk being dispensed in the city by each and every dealer or distributor. Next to milk the food of greatest potency for the spreading of disease is probably meat. Consequently most cities have taken steps to regulate the sale of meat so as to prevent the sale of contaminated products. The national laws on this subject have been of enormous assistance to cities which draw their meat supply largely from the great packing centers; for the Federal inspection is so exacting that cities have little need to duplicate that work. By forbidding the sale within the city of meat not stamped by Federal or municipal inspectors, the city may establish control over all meat products sold within its jurisdiction. Its own inspection will be confined entirely to local slaughtering establishments which do not engage in interstate commerce and to the places in the city where meat is sold at retail. The standards of cleanliness and freedom from disease prescribed in municipal ordinances should certainly not be lower than those fixed by Federal law, and the city should have a trained force to carry on the inspection work necessary to the enforcement of the ordinances. Cities whose meat supply is derived mainly from local sources are practically dependent upon their own legislation and administrative machinery for protection against contaminated meat. Apart from control over milk and meat, municipal regulation of the sanitary character of the city's food supply is directed mainly toward the establishment and maintenance of sanitary conditions in restaurants, bakeries, delicatessen shops, confectionery stores and other places where food is pre-

pared or sold. The objects of regulation in such cases in general are (1) to prevent the handling of food products by persons having communicable diseases, (2) to prevent flies and vermin from having access to foodstuffs that are intended for public consumption, (3) to insure general cleanliness in the handling of all food materials, and (4) to control the quality of the materials used in food products.

Conservation of child life.—The wanton waste of child life in the city has been one of the sad features of urban life. We are confronted by a very high rate of infant mortality and the extensive employment of immature children in industry. The principal causes of the high rate of infant mortality in cities are improper prenatal care of mothers, improper care of mothers and infants at the time of delivery, unintelligent care of children during the period of infancy, and the use of unnutritious and unwholesome milk in feeding children. As corrective measures cities have taken the following steps: (1) licensing and regulating the practice of midwifery, (2) regulating maternity hospitals and homes where children are cared for, (3) prohibiting or strictly regulating the employment of mothers during the prenatal period, (4) licensing and regulating the sale of milk, and (5) the wide dissemination of information as to prenatal care, the feeding of infants, and so on. In addition to these measures, cities have accomplished much in the reduction of infant mortality rates by the establishment of infant clinics in those parts of the city where the rate of infant mortality is highest and by instituting a plan of sending public health nurses into homes where the health of children is neglected on account of ignorance. As an important administrative expedient in facilitating this work it is de-

sirable to have complete birth records and as far as possible a follow-up by the health department of all cases where there is potential danger to the health of infants.

The employment of large numbers of children in industrial and commercial establishments to the detriment of their health and physical development has necessitated the enactment in many states of laws regulating and to a large extent prohibiting child labor, and the enforcement of these laws largely devolves upon municipal authorities. These laws generally prohibit the employment of children under a specified age (usually fourteen years), but often make certain exceptions. Compulsory school laws require the attendance of children under the statutory age in school, and children are not allowed to be employed without a certificate from the school authorities that they have passed the statutory age. When under exceptional circumstances children below statutory age are allowed to work it is common to require a certificate attesting their physical fitness for the work they are to do. By penalizing employers who employ children without a proper certificate as to age and physical fitness, it is possible to throw the responsibility for the exercise of caution in the employment of children upon the employers. The problem of enforcement then becomes largely one of periodic inspections to ascertain whether or not children are being illegally employed, and the records of the school authorities and the health authorities should be of great practical value in carrying on such inspections.

Another activity that is directed toward the conservation of child life and the improvement of child welfare is that of medical service in the schools. There is an unsettled argument as to whether or not the administra-

tion of this work should be under the health department or the school board. The strongest argument in favor of the health department is that medical service in the schools should be integrated with the general child welfare program, which must, of course, be under the general control of the health department. It is also contended that the health department should have charge of medical service in the schools in order to enable it to control the origin and spread of contagious diseases. In favor of control of medical service in the schools by the school board the following arguments are advanced: first, that the work necessarily must be carried on in the school buildings and with the coöperation of school teachers and officials and that consequently there is less friction if it is in charge of the school board; and secondly, it is asserted that in the last analysis, the control of contagion in the schools depends upon the teacher and that more effective work will be done by teachers if medical inspection is under the school board. The work of medical service in the schools covers not only the suppression and control of contagious diseases among children, but periodic physical examinations of each child to ascertain physical conditions in each case which may operate as a limitation upon the child's capacity for school work and may affect his future physical development. Ideally, there should be a complete physical record of each student from the time he enters the public schools until he finishes his school career. These examinations should produce records which would furnish the basis for classifying students according to their physical fitness for progress in school work and should also result in disclosing those cases where corrective treatment is necessary. Great progress has been made in dealing with such cases by the establish-

ment of clinics where children may be treated at public expense upon proper recommendation and authorization by the school physician. Open-air schools and school feeding are also largely employed for the conservation of child life.

Regulation and industrial conditions adverse to life and health.—Industrial accidents and occupational diseases add greatly to the waste of life in cities. Industrial accidents can be largely reduced by legislation requiring the employment of appropriate safety devices. Most states have enacted comprehensive laws on this subject and many of them have set up special machinery for the enforcement of such laws. In a great many instances, however, the state depends upon the municipal authorities for a large part of the inspectional service incident to the enforcement of safety laws. The curbing of industrial diseases is not so simple a matter. Of course, where industrial diseases grow out of insanitary conditions, the solution lies in proper sanitary regulations enforced by effective inspection, but where the industrial diseases originate in conditions that are peculiarly and necessarily incident to the industry, as is the case in many of the chemical industries, it is exceedingly difficult to formulate laws that will meet the situation.

Housing.—The problem of housing from the standpoint of municipal government has two distinct phases. First, and perhaps most urgent in recent years, is the provision of housing facilities sufficient in quantity to care for the requirements of the population of the city. This problem has become unusually acute owing to the virtual suspension of building during the war period and the tremendous augmentation of urban population during the same period brought about by the rapid expansion of industries. A

great deal of legislation, both state and municipal has been enacted within the last four or five years with the object of encouraging building operations. It cannot be said that any of this legislation has been conspicuously successful. The second phase of the municipal housing problem, and the one that requires continuous governmental control, is that of regulating the construction of buildings with a view to the promotion of public health and safety. Unless restrained by public authority builders will take advantage of the congested conditions in cities to erect structures that do not provide adequate light and air and sanitary facilities, and will not use precaution in building so as to minimize the hazards of accident and fire. All cities have, therefore, enacted ordinances regulating the construction and plans of buildings. The enforcement of these building laws involves the approval of plans for building, the inspection of buildings throughout the process of construction, and the continuous inspection of completed buildings to insure the maintenance of proper standards of safety and fitness for human habitation. The actual administration of these laws is very often divided between the building department, which is concerned primarily with the safety of buildings from the standpoint of structural engineering and fire protection, and the health department, which is concerned essentially with their safety and suitability from the standpoint of sanitation and comfort. It is an unfortunate fact that in a great many cities the rigidity of building laws has been largely nullified by laxity in their enforcement.

Institutions for public health service.—We have been so long accustomed to rely upon private philanthropy to provide hospitals, sanatoriums, clinics, laboratories, and

other institutions for the care and treatment of the sick and afflicted, that it still seems somewhat novel for cities to operate such institutions. It has been necessary for cities to enter this field because in a great many places private enterprise has been unable to supply institutional service adequate to the needs of the city. A further reason perhaps is that privately managed institutions are much less easily articulated with the general program of the city health department than public institutions. The institutions commonly operated by large cities at present are general hospitals, emergency hospitals, isolation hospitals, tuberculosis hospitals, psychopathic hospitals, clinics and dispensaries of various kinds, and laboratories for bacteriological and chemical analysis. The administration of these various institutions is a subject much too technical and involved for consideration here. In general it may be said that the only assurance of good management lies in placing them under the charge of experienced and competent officials so situated as to be entirely free from political interference or control.

Vital statistics.—Statistical information is an invaluable aid in public health administration, and therefore nearly all public health departments have divisions for the collection and collation of vital statistics. The necessary basic data for vital statistics are derived mainly from birth records, death records, and records of reportable diseases. It is highly important, therefore, that these records should be designed so as to produce the information needed for statistical purposes and that they should be kept up to date. Inasmuch as the health department has to depend upon the reports of practising physicians for most of its recorded information, it is necessary that it should have some means of compelling physicians to submit the re-

quired reports promptly and in complete form. Often the law makes failure to file reports as required by the health authorities a misdemeanor punishable by prosecution in proper tribunals, but a more effective measure is to give the health department summary authority to suspend or revoke the licenses of physicians who are derelict in filing the prescribed reports.

The value to the health department of birth registration and the statistical information based thereon is that they facilitate intelligent procedure in organizing baby-saving work and in regulating midwives and maternity homes and hospitals. The administrative importance of death registration is that it furnishes a means of ascertaining currently the chief causes of mortality throughout the city, and thus of following the spread of disease and of checking on the efficiency of the reporting of the various reportable diseases. Death records are also of much importance to the police department. The value of complete and up-to-the-minute records of communicable diseases is so obvious as to require no comment. All of these data have a considerable retrospective value in that they can be used to measure the efficiency of the health department, to reveal wherein it has fallen down, and to guide its future procedure.

Public health education.—The nature of the public health problem is such that the success of the public health department is in no small measure dependent upon the voluntary and intelligent coöperation of the people of the city. In order to reach the people and enlist their assistance, municipal public health departments have found it necessary to engage in a continuous campaign of education. The methods ordinarily employed in this publicity work are the publication of widely circulated

bulletins and reports on health conditions with information as to what diseases are prevalent and how to avoid them or to treat them; the distribution of leaflets and circulars on such vital subjects as vaccination, tuberculosis, venereal diseases, infant mortality, the transmission of disease by flies and vermin; conducting in various parts of the city health exhibits showing by graphic methods (as charts, photographs, moving pictures) the prevalence of dangerous diseases and methods of combating them, the dangers of contaminated foods and insanitary conditions, etc.; conducting free public lectures throughout the city on health subjects; and seeking wide newspaper publicity for public health matters.

The necessity of a municipal recreation program.—Recreation is now recognized as a physical and psychological necessity for every individual, and as an indispensable factor in the upbuilding of wholesome community life. The congested arrangements of urban life are utterly adverse to natural modes of recreation for both children and adults and are fraught with danger to life and limb and moral standards. Children obliged to play in the streets and alleys of a city have not a fair chance to develop into healthy, clean, and useful citizens of high ideals; and adults obliged to seek recreation in saloons, pool rooms, dance halls, and similar places have not a fair chance to maintain their health and moral integrity. But the economic status of the great majority of city dwellers is such that they cannot afford to provide yards for children to play in, cannot afford to go to exclusive beaches and country places, cannot afford to belong to athletic clubs, tennis clubs, golf clubs, and the like, cannot afford even to attend concerts and theaters of the better sort. It has therefore become necessary for cities to supply suitable

recreational facilities for their inhabitants, to direct and supervise the use of such facilities, and to impose and enforce upon commercial recreation stringent regulations designed to prevent the debasing of the people of the city.

Municipal recreation facilities.—There are two distinct types of recreation—that which emphasizes physical activity and that which stresses mental activity. It is incumbent upon every city to provide ample and appropriate facilities for both kinds of recreation. In evolving a recreation program the city should use care to avoid duplicating facilities already supplied by private institutions or foundations and at the same time should take into consideration its probable future recreational needs in all parts of the city. The establishment of a recreation policy should, therefore, be preceded by an exhaustive survey of present recreational needs and the facilities (public and private) which exist to satisfy those needs. From this it will appear whether there is a present deficiency of recreational facilities. Then there should be a careful study of the city's probable future growth physically, economically, and socially over a period of ten or twenty years. Translating this study into terms of recreational requirements, it will be possible to determine what kind of a recreational program ought to be undertaken by the city government to supply existing deficiencies and provide for future needs.

Public facilities for physical recreation generally include parks, playgrounds, beaches, bath-houses, gymnasiums, dance halls. These facilities should be designed and located to meet the needs of both children and adults. Authorities on municipal recreation have laid down the rule that a city's park acreage should average about one for each 200 people. More important than the maximum

park acreage, however, is the distribution of parks. Concentration of park area in a few large parks does not serve the city as well as numerous small parks well placed throughout the city. Intelligent and disinterested planning is necessary to insure the proper location and distribution of parks. The chief purpose of playgrounds is to afford the children of the city opportunity to play under safe and wholesome conditions, but it is coming to be recognized that there is need for baseball diamonds, football fields, tennis courts, golf links, and the like for the use of adults. The location and number of public beaches has in the past been limited by natural advantages or disadvantages, but lately cities have gone in for the construction of artificial beaches and swimming pools to such an extent that inland cities now often excel seaboard or lakeshore cities in the abundance of facilities provided for public bathing. Cities do not as a rule attempt to build gymnasiums and dance halls in large numbers because these facilities are quite commonly made available to the neighborhoods needing them through private social agencies or because school buildings can be utilized for the same purpose.

There are numerous municipal institutions, such as museums of art, science, and history, libraries, zoölogical and botanical gardens, auditoriums, and stadiums, which although they are primarily educational in purpose, incidentally serve as agencies for mental recreation. This is a field which private philanthropy has been wont to occupy almost exclusively, but these things have become so important in municipal life that cities are being forced to enter it in order to provide adequately for the needs of the people. Libraries and museums that were established on private foundations have become wholly or partly

municipalized in order to enjoy greater revenues and extend their services more freely to the people. Cities in which private philanthropy has not supplied institutions of this kind have been forced to do so themselves. Zoölogical and botanical gardens, once conducted entirely by private individuals as profit-making ventures, have become municipal enterprises almost without exception. Indicative of the present-day trend toward increased public responsibility in supplying facilities for mental relaxation and recreation is the movement for municipal auditoriums which is now sweeping the country, lectures, concerts, and exhibitions, sometimes under public and sometimes under private auspices, but always under public supervision. Of the same character is the movement for stadiums and open-air theaters.

In the administration of recreational facilities there are two major problems—that of custody and care of grounds and equipment and that of utilization to the best possible advantage. The first is simply a matter of routine administration in the operation and maintenance of the buildings, grounds, and equipment used for recreational purposes. The second is much more difficult and consequently is seldom as well done. For children especially, public playgrounds are of limited value unless their play is directed and supervised by competent instructors. But competent playground supervisors are difficult to obtain: first, because the work requires experience and training even on the part of persons having a natural aptitude for it; and, second, because the seasonal character of the work makes it impossible to build up a permanent staff. Add to this the further fact that political influence quite often has much to do with the selection of playground employees, and the reasons for the poor

management of municipal play facilities are not difficult to perceive. Perhaps the most successful way of obviating these difficulties has been to organize a small permanent staff of experts which can be used to direct and coach the employees who must be added during the busy season. The administration of institutions like museums and zoölogical gardens present special problems also, but they are in the main of a highly technical nature.

The regulation of commercial recreation.—It is well known that saloons, pool rooms, theaters, dance halls, cafés, and other recreational enterprises carried on for private profit readily become breeding places of vice and crime unless subjected to rigorous public control. Every city has a large body of legislation regulating the operation of such establishments. It is a universal practice that they must be licensed by public authority, and that licenses are revocable for violations of the law. In addition, such establishments are subject to continuous inspection, which may be carried on by the police or by special inspectors. The difficulties in the way of stringent enforcement of ordinances and regulations applicable to amusement places are notorious.

The city government and the problem of dependents, defectives, and delinquents.—The relief of the poor, care of defectives, and the handling of delinquents have long been recognized as proper governmental activities, and in municipal government they constitute a problem of outstanding magnitude because the conditions of urban life greatly intensify the forces that operate to create dependents, defectives, and delinquents. These functions have always been divided between government and private philanthropy, with governmental responsibility being constantly on the increase; and in the United States, in so far

as they have been assumed by government, they have been divided among state, county, and municipal governments in strange and illogical ways. It is accordingly very difficult to define the precise relation of the city government to the problem of dealing with the dependent, defective, and delinquent classes. Nor is it any easier to supply an accurate description of municipal activities in this field, because it is seldom that any two cities do exactly the same things or have exactly the same relation in these matters with private social agencies and with the county and state governments. Municipal functions with reference to dependents, defectives, and delinquents are increasing rapidly, both because of the growing inadequacy of private endeavor and because the huge increase of city population during the past two or three decades has emphasized city as contrasted with county and state responsibility in these matters.

Municipal charities.—The eleemosynary activities of cities are of two principal kinds—outdoor relief and institutional relief. Outdoor relief consists of direct aid to indigents in their own homes by means of gifts of cash or supplies. This form of relief has been very generally condemned as undermining the character and self-reliance of the recipients, but there are certain types of cases for which it seems to be the most practicable method of treatment. It is quite probable that the deplored results of outdoor relief are more attributable to the faulty way this relief has commonly been administered than to the inherent unsoundness of the principle itself. In the past, (and to a certain extent it is still true), relief of this kind was administered with little or no attempt to find out the actual facts regarding applicants for outdoor relief and the causes of their condition and how these conditions

might be removed. On the contrary the relief has been dispensed mistakenly, blindly, and not infrequently as a political perquisite. To administer outdoor relief properly requires an organization of trained social workers, capable of making the necessary investigations, analyzing the data, and proceeding with each case on a scientific basis. It is because of failure to set up such an organization that cities are prone to fail with outdoor relief.

Institutional relief for indigent persons is provided in homes for the aged and infirm, homes for dependent children, institutions for the treatment of inebriates and drug addicts, hospitals for the care of the sick, and other such institutions. The number of such eleemosynary institutions maintained by a city is determined to a large extent by the number and character of privately supported institutions performing the same service in the city, and by the indigent classes of the city that can be cared for by county and state institutions. The administration of municipal institutions for the care of the various types of dependents is not, as is often supposed, simply a matter of good business management, but it involves many special problems that only the trained social worker is competent to deal with. If, therefore, it is not possible to place at the head of such institutions professional social workers who have the capacity for business administration also, it may be necessary to organize a professional staff solely for the care and supervision of inmates and have the business functions handled independently. The privately operated eleemosynary institutions of the city present governmental problems in two ways: first, it has been found necessary to prescribe and enforce upon such institutions certain standards of administration, and this, aside from its political repercussions, has called for muni-

cipal inspection of these institutions; second, it has been important to obtain the coöperation of these institutions in securing information that is particularly helpful in the administration of juvenile courts, domestic relations courts, municipal eleemosynary institutions, and outdoor relief.

The treatment of the feebleminded.—Municipal care of the feebleminded may be said to be in its infancy. Except for the work that is being done by the schools in some cities in training subnormal children, by the psychopathic departments of city hospitals in a few cities, and by special institutions for mental defectives in a very small number of cities, municipal government has left this problem entirely to private initiative or to the action of the state or county. The causal relation between mental deficiency and many sorts of crime, delinquency, and dependency, is well established, and the halting way in which states and counties have met the problem may be expected to result in increasing municipal activity in this field.

Municipal corrections.—Those aspects of the problem of dealing with criminals and other delinquents that pertain to the operation of the legal machinery for securing the conviction of the offender have been discussed in Chapter VII. After conviction the problem is one of applying such punishment and administering it in such a way as to rehabilitate the moral life of the offender and restore him to society as a safe and valuable member of the community, if that is at all possible—in other words, to apply to each case the most approved principles of the science of penology. If the offender is convicted of a felony, this responsibility is removed from the municipality and devolves upon the state government, but if his

offense is a misdemeanor, as is true in the great majority of cases, the responsibility for corrective punishment rests upon the county or the city, and in metropolitan districts, it is usually the latter. It is not intended here to enter into a discussion of the administration of jails, workhouses, reformatories, detention homes, and the like, but simply to point out that these municipal institutions are in many respects of far more vital importance as corrective agencies than state prisons. The reason is that most persons enter upon a life of crime as misdemeanants, and by proper treatment when first committed to penal institutions a great many might be saved from becoming hardened criminals. If penological science can accomplish any results at all in the social reconstruction of offenders, certainly its most fruitful field is in the city. But municipal penal institutions are rarely cited as models in this respect. The governing authorities of cities have seldom realized their responsibility or visualized their opportunity in this field of municipal activity; they have usually thought of municipal improvement in terms of pavements, sewers, parks, and "white ways." Moreover, politics has played too much of a part in the selection of the administrative personnel of municipal penal institutions for scientific methods to have much of a chance.

In dealing with the problem of juvenile delinquency cities have as a rule been more progressive than in dealing with adult offenders. Juvenile courts have been established in all of the larger cities and systems of probation administration instituted that have been pretty much in line with the most approved principles of scientific penology.

The promotion of economic welfare.—The justification

for most of the welfare activities of cities lies in the public importance of the safety, health, and morality of the individuals who make up their population. But the modern city is engaged in many welfare activities that have little or no relation to these traditional bases of municipal welfare functions, and in reality can have no other justification than that the public interest requires governmental protection and assistance for the individual in his economic life. In this respect the city of to-day is as different from the city of a century ago as the latter was different from a city of medieval times.

One of the earliest and most universal measures for the economic protection of citizens is the regulation of weights and measures. This activity is predicated upon ordinances forbidding and penalizing the use of false or fraudulent weights and measures, regulating the manufacture, installation, and use of such apparatus, and providing for inspection and other administrative expedients for enforcement. A great deal depends upon the discretion given to the administrative officers charged with the enforcement of these laws. This function seems to have no fixed place in the departmental organization of municipal government. Sometimes it is located in the department of public works, sometimes in the department of buildings and public property, sometimes in other departments. There are even cases where it is organized separately. It would seem to be as much a police function as anything else.

Another activity of the same sort is the regulation of the sale of foodstuffs so as to prevent adulteration, substitution, and deception. In so far as its object may be to prevent the sale of deleterious foods this regulation may be regarded as a public health function, but when

its object is to prevent the sale of adulterated, misbranded, or misrepresented foods the basis is purely economic. This is virtually repealing the common law rule of *caveat emptor* by municipal paternalism, but if it is justifiable to protect the citizen against fraud as to the quantity of his purchases by regulation of weights and measures, there is certainly equal reason for giving him protection as to quality.

The operation of employment agencies by cities is another welfare activity intended for the economic assistance of their inhabitants, primarily for the benefit of those seeking employment but incidentally to the very great advantage of employers. These agencies as a rule make no charge for their services, thus indicating that bringing the man and the job together has come to be accepted as a proper public function to be financed out of tax revenues.

A further indication of how far cities are accustomed to go in matters of economic regulation are the numerous ordinances designed to prevent rent profiteering. The act of the New York legislature which was enacted in 1920 to cope with the housing crisis in New York City imposed arbitrary restrictions upon rent increases, but it was upheld by the United States Supreme Court. But there are other objects of regulation than rent. Municipal ordinances commonly specify when the operators of apartment houses must supply heat, and sometimes govern other essential terms of the contract between landlord and tenant.

Another way in which cities strive to promote the economic well-being of their inhabitants is by the establishment of markets municipally owned and operated, or if privately owned and managed, under municipal super-

vision and control. The chief purpose of public markets is to bring about a reduction of the cost of food to the consumer, as well as to regulate more effectively the quality of food sold and the honesty of the weights and measures.

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CHAPTER XIII

THE EDUCATIONAL SYSTEM OF THE CITY

Education is one of the most important functions of the modern city, and in American cities it occupies a more prominent place than in European cities. There are some American cities that spend more money on schools alone than all other municipal purposes combined, and the operation of schools is but one of the educational activities of present-day cities. Cities to-day have vast systems of libraries, museums, and galleries, which are primarily educational although they perform certain recreational services. The same may be said of social centers, forums, lecture programs, Americanization classes, and the like, which are activities now supported by almost every progressive city. Indeed, not the least encouraging thing about municipal democracy in this country is the lavish way in which it has been willing to spend money on education and its persistent unwillingness to economize on education for the sake of more material things.

The relation of municipal school systems to the state.—The school system of every city is but a part of the school system of the state, but as a rule cities enjoy such a large amount of local autonomy in the management of their schools that the responsibility for the direction and operation of the schools and for their success or failure rests squarely upon the locality. It is true that there

has been a marked shift toward centralization of educational administration during the past two or three decades, but in most states there is still much latitude left to the city school authorities. The state generally determines the organization of the local school authorities, prescribes in part at least the curriculum of city schools, fixes the qualifications of teachers, establishes standards of sanitation and construction for school buildings, sets up requirements for school attendance, regulates the financial powers and procedure of boards of education, and sometimes even specifies the textbooks to be used in city schools. But beyond general strictures of this character, the local authorities are commonly free to proceed in their own way to organize and operate their school system.

The relation of the school system to the city government.—In the preponderant majority of cities the school authorities are entirely independent of the city government. The customary scheme has been for a school district to be organized as a separate corporation with financial and other corporate powers entirely distinct from those of the city. And it often happens that the territorial boundaries of the school district are not coincident with those of the city. There are, however, a few cities where the school system is partially or wholly integrated with the city government. New York is a good example of a city in which the school system is partially under the city government. The school board in New York is appointed by the mayor and the appropriations for the support of the schools are authorized by the Board of Alderman on recommendation of the Board of Estimate and Apportionment. Except for these points of contact with the city government, the school board is sup-

posed to function as an independent agency. In several of the cities having the commission form of municipal government the school system is simply one of the departments of the city government, there being no board of education with independent policy-determining powers, but an elective commissioner of education heading that department as other elected commissioners head other departments of the city government.

Fundamentally there is but one reason for providing for educational administration separate from the city government, and that is to remove the schools from the pernicious and demoralizing influence of municipal politics. It cannot be said that the independent system has always, or ever, completely accomplished this result, and in fact there are numerous instances of independent school boards being as thoroughly ridden by machine politics as any city council. Nevertheless, it is the consensus of opinion among authorities on school management that the chances of non-political administration are somewhat better under the independent system than when the schools are united with the government of the city. As cities revise their systems of government so as to introduce non-political administration in municipal government, as a great many are doing by the adoption of the manager plan, it will be interesting to note the arguments that will be invoked to defend independent school administration. It is not intended here to ignore or brush aside the many cogent reasons, aside from the political one, that are advanced to justify independent school management, but merely to emphasize the fact that they are after all secondary reasons. If, therefore, the basic objection to operating the schools as part of the city government, which is the danger of political contamination, can be

removed, we should be willing to give weight to those facts which argue for the union of school administration with the city government. Among these are the difficulties that result under the independent system from the absence of proper coöperation between the school authorities and the city authorities in matters pertaining to city planning, recreation, public health, the handling of juvenile delinquents, and other matters where both are concerned.

School organization and administration.—The head of the city school system, with a few exceptions already noted, is a board, commonly called the board of education. Boards of education vary in size, the usual number being five, seven, or nine. There was a time when large boards of education were in favor, but the trend in recent years has been toward the reduction of the size of the board. This movement has run parallel to the similar movement for the pruning of city councils, and is founded upon the same reasons—the unwieldiness of large bodies, the obscurity of their motivating forces, the inferiority of their membership, and their susceptibility to political influence. The last notable change from the large to the small board was when New York in 1917 reduced the size of her board of education from forty-six to seven.

Members of boards of education are commonly chosen either by popular election or by appointment by the mayor. The elective method is held in somewhat higher esteem by authorities on educational organization on account of their belief that it produces board members of higher character and ability, more responsive to public will, and less likely to be allied with a political machine. It is not recorded that this opinion is based upon an exhaustive comparative analysis of the quality of board

members produced by various systems of selection, and it probably rests upon rather casual comparisons of the worst examples of the appointive system with the best of the elective. It so happens that in the cities which have been used as conspicuous examples of the defectiveness of the appointive system the general tone of municipal politics has been so low that no one could say with confidence that the elective system would have produced better results than the appointive system in those cities. And it likewise happens that the cities which are generally selected as examples of the superiority of the elective system are cities in which political conditions have been such that the appointive system might have produced equally good results. Argument by analogy is always weak unless the parallelism is absolute in every important particular. There are three ways in which members of boards of education are appointed—by the mayor, with or without councilmanic confirmation, by the city council, and by the courts. The last two methods named are used in only a few instances, but the first is used in a number of the larger cities. The leading theoretical argument for the appointive method of selection is that by appointment leading citizens can be drafted for service on the school board who would never offer themselves as candidates at an election. It is hardly necessary to say that this expectation is rarely realized in practice because our mayors have not generally been of the caliber to make appointments without political bias.

As in the case with city councils the present tendency is to lengthen the tenure of members of school boards, and also to rotate the terms so as to have a continuous body. The disadvantages of frequent renewals either by election or appointment are especially acute in the case of boards of

education because continuity of policy and freedom from the disruptive influence of politics are imperative in successful educational administration. Members of city councils are almost invariably compensated for their services and members of boards of education as a rule are not. This is illogical but perfectly defensible on the ground that compensation is more likely to have an unfortunate reaction upon the quality of the membership in the case of boards of education than is the case with councils.

The question often arises as to whether a single head for the educational system would not be preferable to a board. As long as the educational system is independent of the city government, the answer must be in the negative; for the conduct of the schools involves legislation as well as administration, and a representative body is necessary for legislation. Where the school system is assimilated to the city government and the people are willing to trust the city council to legislate on school matters, the single head is not only practicable, but preferable.

Under the board of education there is a vast and complicated organization. The superintendent of schools is the officer charged with the direction of the strictly educational activities of the school system, and is generally regarded as the executive head of the school system under the board, although he rarely has the functions of a real chief executive. The superintendent of schools is appointed by the board, and customarily for a fixed tenure of office. The fact that the personnel of school boards changes rapidly and that the superintendent's tenure is specifically limited results in such frequent changes in the incumbency of the office of superintendent that most

cities suffer greatly from the lack of continuity of educational policies and methods. In this respect city school systems are in marked contrast with state universities whose presidents are chosen without limitation of term and often serve for uninterrupted terms of ten, twenty, and even thirty years. There is no valid reason why the same condition could not prevail in city school systems, and when cities learn that permanence of tenure and security against the attacks of dissatisfied individuals or factions are necessary to attract superintendents of the magnitude of state university presidents, they will have discovered one of the surest and quickest ways of improving the management of their schools. The functions of the superintendent of schools comprise the selection of principals, supervisors, teachers, and other members of the educational staff, the assignment of teachers to their duties, the regulation and supervision of methods of teaching, the determination of the content of the course of study subject to the restrictions of state law, the administration of discipline in the teaching force, and the responsibility for promotions among the teachers. In the larger school systems the superintendent must necessarily delegate much of this work to his assistants, and in some cities the approval of the board of education is necessary to the validity of many of the superintendent's actions.

In order to conduct the educational work of the schools it is necessary to construct and operate large numbers of school buildings widely distributed throughout the city and to carry on a large volume of operations of a business character. It has not generally been thought prudent to confer these functions on the superintendent of schools, and consequently most school boards have various other officers and agencies charged with the business and finan-

cial operations of the schools. Sometimes these functions are divided between clerk, or secretary, and the treasurer of the board of education; sometimes there is a school auditor or comptroller in addition to the above officials; sometimes there are special officers for special functions as a school architect or a superintendent of buildings; and sometimes there is a comprehensive business department with a head coördinate with the superintendent of schools.

Since the board of education is a body of citizens, who, as respects school matters, may be regarded as amateurs and who devote but a small portion of their time to school affairs, it is impossible for the board to bring about harmony and effective coöperation among its various educational and business agencies, which are composed of full-time professional officials. The administration of city school systems is, therefore, quite generally characterized by a lack of unity that is seriously detrimental to efficiency. It is frequently proposed to obviate this condition by subordinating the officers and agencies performing business functions to the superintendent of schools. The objection to this lies in the prevalent belief that school men are impractical and untrained in business practices, and consequently that no superintendent of schools could be found who would be capable of administering the business functions himself or directing subordinates in the administration of that work, and further that capable business executives would not serve as subordinates under a school man. This argument is as absurd as it would be to insist that the President of the United States should not be commander in chief of the navy unless he is a sailor and schooled in the science of navigation and naval warfare, or to say that no competent naval officer would want to be an admiral in the United States navy because the

President is a landman. The fact is that the alleged incapacity of educators as a class for practical administrative work has never been proved one way or the other; but it is one of those comfortable illusions that tickle the vanity of the so-called hard-headed business man. The probabilities are that if business men as a class were obliged to work under the continuous glare of publicity, as educators are, there would be some surprising discoveries regarding the prevalence of administrative ineptitude and impracticalness among business men. The fundamentals of human nature are much the same in all vocations, and in every walk of life there are people who have the inherent ability to administer large enterprises and there are people who do not. The teaching profession has its proportionate share of both kinds. If administrative unity in the organization of city school systems is desirable, there is about as much chance of obtaining a satisfactory chief executive in the ranks of the educational profession as anywhere else.

A much more cogent argument against administrative centralization under the superintendent of schools is the danger, which is by no means imaginary, that he would become so completely immersed in the business side of school administration that he would neglect the educational side and would therefore fail to supply the vital educational leadership that is essential to the morale of a large school system. Much would depend upon the character and ability of the man, but it must be acknowledged that there is a danger of impairing the educational usefulness of the superintendent of schools by making him responsible for the business as well as the educational activities of the schools system.

The solution of the problem is not easy, and conse-

quently most cities cling to the old system of divided responsibility under the board of education, despite the very serious evils that may be directly attributed to it. It is far more difficult to introduce innovations in school organization than in municipal government because school districts do not have the same degree of local freedom as cities.

The scope of city school systems.—A most striking feature in the development of city school systems is the degree to which the basic elements of education, colloquially known as the three R's, have been supplemented by the addition of new subjects of study that are mainly of a vocational character. City schools now offer instruction in such subjects as manual training, printing, metal working, mechanics, cooking, sewing, typewriting, shorthand, bookkeeping, drawing, and music. We have trade schools, technical schools, art schools, commercial schools, and night schools. There is special instruction for the blind, the crippled, and the mentally defective; medical examinations and medical care are provided for pupils; lunches are provided for pupils who are underfed or improperly fed; open-air classes are provided for tubercular children; and furthermore schools are now lavishly equipped with gymnasiums, playgrounds, and auditoriums, and these are used not only for school purposes but as social and recreational centers.

These so-called fads and frills have of late years become a source of much concern and discussion among educators and school officials. An unpublished study of the causes of the rising cost of local government in some sixty-odd American cities, which was made by the New York Bureau of Municipal Research in 1919, disclosed the fact that the rapidly increasing cost of education more than

anything else has been responsible for the tremendous augmentation of local tax rates in recent years. This truth is slowly sinking into the public mind, and rightly or wrongly the newer activities are blamed for the excessive cost of local education. Moreover, leading educators are beginning to sound alarms against the dangers of diffusion in education to the neglect of fundamental studies. It is possible, therefore, that we shall witness during the next few years a reaction against the diversification of the school curriculum and a movement in favor of concentration on what are regarded as essentials. In endeavoring to arrive at an objective judgment on this question one should not overlook the fact that most of the newer activities of the schools have been undertaken in response to an insistent public demand, and it is by no means clear that they can be abandoned without serious opposition. Again, it should not be forgotten that what is fundamental in education must be determined not on the basis of what has been traditionally so regarded, but on the basis of what is reasonably necessary to prepare children of all classes for life in the modern city.

Higher education in the city.—Higher education has been quite generally conceded to be beyond the proper scope of the city school system. A number of cities have established normal schools or teachers colleges, but these have always been regarded as merely auxiliary agencies to supply the lower schools with properly qualified teachers, and their curricula have rarely extended more than two years beyond the high school. The municipal university as the capstone of the public school system is relatively a rare phenomenon in American education and the only cities which have ventured into the field are New York, Charleston, Louisville, Cincinnati, Toledo, and

Akron. In a number of other large American cities there are universities which serve the purpose of municipal universities, but they are not municipally supported and governed. The chief justification of the municipal university is that it brings the opportunity of higher education to that ever-increasing throng of graduates of city high schools who cannot afford to go away to college, and who perhaps cannot even afford to pay the tuition rates and fees charged by local private institutions, but who are in every respect worthy of higher education and will make a more valuable contribution to the life of the city by reason of having such an education. Through its professional and scientific departments a municipal university can be of great service in improving the professional, commercial, and industrial life of the city, both directly by rendering technical services and indirectly by continuously sending out into the community well-trained men and women. A university in a city has a stimulating effect on the public school system, especially if it is intimately correlated with the schools. In fact, a strong university touches in a stimulating way nearly all phases of urban life, and that fact together with the first reason given explains the growing interest in the municipal university movement all over the country.

There is no fixed form of government for municipal universities and the actual variations are very great. It is customary to have a governing board independent of the municipal board of education, although in some instances the president of the board of education is *ex officio* a member of the governing board of the municipal university. The selection of the governing board may be accomplished in different ways, appointment by the mayor being the most prevalent method.

In view of the increasing interest in the establishment of municipal universities it may not be inappropriate to remark that if we were not accustomed to think of a municipal university as an institution with a physical plant and equipment distinct from the other educational facilities of the city, it is probable that municipal universities would multiply much more rapidly than they have. Practically every city of 100,000 or more inhabitants already possesses most of the facilities necessary for a municipal university. Its public library system could very well be used for university purposes; its high schools, with careful planning and very little additional expense, could supply laboratories, shops, and lecture rooms; and the principal item of extra expense to the city would be the compensation of the administrative and teaching staff of the university. There would be numerous difficulties in organizing a municipal university in this way, but it is believed that they are not insuperable. Some day a city will succeed in utilizing its existing educational equipment and facilities for university purposes, and when such an example is furnished it will be widely imitated.

Libraries, museums, and other educational activities.—Public libraries and museums are yet in the transitional stage from private to public ownership and control, and there is yet no city which actually owns and operates all of the institutions of this kind with which it is supplied. Municipal ownership and operation has advanced farther in the case of libraries than has been the case with museums, art galleries, and the like, there being very few cities now which do not have a publicly supported and managed library system. Undoubtedly the greatest volume of public library work consists of the circulation of books of fiction, but this is only one, and possibly not

even the most important, function of the public library system in the community. By collecting and organizing material relating to various phases of municipal activity the library can be of great service to the city government; and, recognizing this fact, municipal reference libraries have been established in a great many cities as branches of the public library system. By organizing collections of books, pamphlets, and other information on various phases of business and industry, the library can be very helpful to business men. In the same way it can serve the various professions, and can be of particular value to school teachers in assembling pedagogical literature. Clubs, civic organizations, labor unions, and the like may be served by means of collections of material in which they are especially interested being loaned to them for stated intervals. The foregoing are but a very few examples of the service that a library system can render to the people of a municipality.

A well-organized public library system consists of a central library and a number of strategically located branches functioning together as a unit. The nature of the work is such as to require a trained staff of workers headed by a chief librarian possessing executive ability and social vision in large quantity. It goes without saying that the personnel of the library system should be on a permanent basis and removed from political influence.

Public library systems are generally governed by boards of trustees or directors, but the relation of these governing bodies to the city government is not determined according to any well-defined principles. The method of selecting members of library boards has much bearing upon their relation to the city government. Possibly the most common method of selection is appointment by the mayor,

or mayor and council jointly; but even when such is the case it is very rarely that the library board has a close organic relationship with the municipal government. The terms of members are usually rotated so that it does not often happen that the appointees of one mayor constitute a majority of the board, and more than that the board is usually authorized by law to proceed more or less independently in the management of the library system. In cities under the commission and manager forms of government, if the library board is retained at all, it is generally placed in one of the administrative departments and thus to a large extent subordinated to the city government. In some cities members of the library board are elected by popular vote, and when this is the case the position of the library board is somewhat analagous to that of elected boards of education. On the ground that the library system is functionally a part of the educational system of the city it has been advocated that the administration of the library system should be integrated with that of the public school system. No city has gone that far, though in Ohio library boards are appointed by boards of education and in several states the board of education has *ex officio* representation on the library board.

Publicly supported science and art museums are not very numerous in American cities. A few cities have established such museums in connection with their public libraries, and others conduct one or more museums independent of other municipal departments or agencies. The service of museums is primarily educational and it would seem that they might well be administered as a part of the educational system through existing agencies. Zoölogical and botanical gardens, which are also of a highly educational character are almost invariably ad-

ministered by the park department because they are necessarily located in city parks. The work being mainly of a custodial nature, little if any gain would result from having zoölogical and botanical gardens one of the strictly educational organs of municipal government.

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MUNICIPAL FINANCE

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CHAPTER XIV

THE FINANCIAL DISABILITIES OF CITIES

The subject of financial limitations upon cities is one of such importance that it is difficult to understand why it has not received more extended consideration from students of municipal government. Every activity in which cities are engaged and every activity they may undertake must in the last analysis be reduced to terms of finance. If the financial powers of cities are circumscribed, this fact will necessarily react upon their policies and operations. Sanitation, safety, street care and cleaning, recreation, and all other services that municipal government performs are conditioned by the financial restrictions under which the government must be conducted. The extent to which such limitations are imposed and the results of their application explain many of the distressing difficulties of municipal finance.

Financial limitations in Europe and America contrasted.—There is no country in which cities are allowed complete self-determination in matters of finance, but in the United States the financial limitations imposed upon cities are distinctively complex and arbitrary. In England municipal corporations are subjected to certain external restrictions as to the sources of their revenues

and as to their borrowings, but such limitations are both simple and flexible. A municipality may not as a rule levy taxes so long as the "borough fund" (the earnings of municipal property, franchises, and enterprises) suffices to care for the annual expenditures; but there is never any restriction upon the rates or amounts of taxes that may be levied to supplement the borough fund when it proves inadequate, which is almost invariably the case. Borrowing is restricted to the extent that no permanent debt may be incurred without the approval of the Ministry of Health, the Board of Trade, the Home Office, or some other central authority having jurisdiction over the object of the loan; but there is no fixed limit of indebtedness either in relation to assessed valuation or annual income.

German cities appear to possess about the same degree of financial freedom as English cities. "There are certain local taxes which are common to most of the communes of a state, since they are assigned to them by the general laws; yet the individual commune decides whether and to what extent it will levy even those taxes, and if it adopts them it may do so with its own modifications within limits, alike as to the form of their assessment, their amount, and their incidence, so as to meet its own special circumstances. Beyond these prescribed taxes, each commune determines its own taxes quite independently."[1] As in England, loans may not be contracted without the sanction of a central administrative authority, which to a certain extent is guided by fixed, though not mandatory, rules as to purpose, amount, sinking fund provision, and the like.

In France cities are placed under the strict tutelage of the central government, and virtually all of their financial

[1]W. H. Dawson, *Municipal Life and Government in Germany*, p. 363.

activities are subject to the approval of the prefect or other central authority. It should be noted, however, that there are no specific and rigid mathematical limits as to taxing, borrowing, and spending, and that the freedom which the French cities enjoy varies with the censorial proclivities of the several prefects. As a matter of fact, most observers have declared that prefects are usually disposed to concede to cities all possible latitude in managing their own financial affairs, and that French cities actually have enjoyed financial autonomy comparable to that of English and German cities.

In striking contrast with the elasticity and adaptability of these systems of central control of municipal finance is the situation in the United States, where the great majority of cities conduct their financial operations within a sphere whose metes and bounds consist of constitutional or statutory enactments setting more or less precise mathematical limits to the amounts of taxes that may be levied, the amounts of indebtedness that may be incurred, and the purposes for which expenditures must be made. Imposed by constitution or statute, they may be lifted or modified with great difficulty; and, except as mitigated by the courts in actual application, they stand as adamantine barriers to local freedom and local responsibility in financial matters.

Tax limitations on American cities.—In about five-sixths of the states of the American Union there are general limitations upon the taxing power of cities, imposed either by the constitution of the state or by act of the legislature; and in the remaining states, not having general tax limitations, there are special limitations applying to a single city or a group of cities. These tax limitations are of two principal types: (1) cities are forbidden to levy taxes in excess

of a fixed percentage of the assessed valuation of taxable property within the city; and (2) cities are forbidden to levy taxes in excess of a fixed percentage of the next preceding levy.

The first type mentioned is by far the most popular and may be found in somewhat more than one-half of the states. The famous Smith One Per Cent. Law of Ohio is a good example of a statutory enactment of this kind. This law enacted by the legislature of Ohio in 1910 restricts the annual levies of all taxing districts to an amount equal to one per cent. of the assessed valuation of taxable property listed in such districts, with a possible increase to one and one-half per cent. by popular referendum. The constitution of Arkansas furnishes a good instance of a constitutional restriction of the municipal tax rate on the basis of assessed valuation, the provision being that cities are limited to an annual tax levy of one-half of one per cent. of the assessed valuation of taxable property within the city.

Limitations of the second type are to be found in a small group of states, of which Oregon and Indiana may be taken as examples. In the former state by constitutional provision cities and other taxing districts are forbidden to levy in any year an amount of taxes in excess of one hundred and six per cent. of the tax levy of the preceding year. In Indiana the annual levy may not exceed one hundred per cent. of the previous year's levy, thus leaving no room for expansion except by raising the assessed valuation of property.

Debt limitation on American cities.—American cities are subjected to general constitutional or statutory limitations as to the purposes and amounts of the debts they may incur. With nine exceptions the states have for-

bidden cities to lend their credit to private enterprises; and twenty-eight states have fixed a general limitation, based upon assessed valuation, upon the total amount of indebtedness municipal corporations may incur. These limits vary widely in amount, but the majority are fixed somewhere between two and seven per cent. of the assessed valuation to taxable property in the city. A number of states do not have fixed debt limits based upon assessed valuation but forbid the incurring of debts in any year in excess of the income and revenue for that year. Certain types of indebtedness are exempted from the limitations in many states, as loans for waterworks, lighting systems, or other utilities of a character that might be expected to be largely self-sustaining. Sometimes provision is made for exceeding the debt limit by affirmative vote of the people on referendum, an extraordinary majority being required in a number of cases.

Mandatory expenditures.—The financial disabilities of American cities do not end with the rigid curtailment of the taxing power and the borrowing power. By mandatory legislation in almost all of the states cities are to a large degree robbed of discretion in determining the objects and amounts for which their funds shall be expended. Numerous examples occur in the experience of every city. Municipal offices and positions are created by act of the state legislature which at the same time fixes the salary or rate of compensation; the city may be required by state law to commit certain persons to state institutions and pay a fixed rate for their maintenance; a pension fund for municipal employees may be created by act of the legislature and the city compelled to make fixed contributions to it; the publication of certain advertisements may be made obligatory upon the city—

these are but a few examples of the common practice of lacing cities into a straight jacket of mandatory expenditures. It is difficult to estimate what proportion of the annual budget of American cities consists of outlays of this sort. In some cases it has been claimed to be as high as 80 per cent. of the total; in others as low as 15 per cent. One of the most careful investigations recorded was made in connection with the 1915 budget of New York City. It was shown that 25.9 per cent. of the total expenditures for that year was absolutely fixed by external authority and not subject to increase or decrease by the city, that an additional 11.34 per cent. was partly fixed, and that only 62.76 per cent. was entirely within municipal control.

Home rule and financial limitations.—The curious mind will at once inquire as to how state constitutional amendments providing for municipal home rule have affected the financial disabilities of cities. For convenience in dealing with this subject the home rule states may be divided into four classes: (1) those in which the home rule amendment itself imposes specific financial restrictions upon cities; (2) those in which the home rule amendment contains general reservations which enable the legislature to impose financial limitations upon cities; (3) those in which the home rule amendment specifically guarantees financial independence to cities; (4) those in which the home rule amendment is couched in broad general language and contains nothing directly bearing upon the subject of financial limitations.

The home rule provision of the Texas constitution is unique in that, together with a grant of home rule to cities, it carries a tax limitation of two and one-half per cent. upon assessed valuation and a debt limitation, which forbids cities to create indebtedness without at the same time

providing taxes to pay the interest and create a sinking fund. There can be no doubt that in this case the grant of home rule was not intended as a relaxation of the financial restrictions upon cities. In Minnesota, Michigan, and Ohio the home rule amendment reserves power to the legislature to place cities under financial disabilities. The only question that can arise under such an amendment is as to the effect of the adoption of a home rule charter in conflict with an act of the legislature founded upon such reservations, but subsequent to the legislative act. Such a question was raised before the Ohio Supreme Court in February 1922, and the decision was that the act of the legislature would take priority over the subsequent home rule charter. This case was especially interesting because the legislative act in question antedated the home rule amendment itself. In Colorado the home rule provision of the constitution expressly accords to cities local autonomy in the issuance, refunding, and liquidation of bonds, and in the assessment of property and the levy of taxes for municipal purposes. This is the nearest approach to complete financial emancipation among the home rule states. In the remainder of the home rule states the language of the home rule provision contains nothing specifically bearing upon the subject of financial limitations, and it has remained for the courts to construe the restrictive legislation in the light of the home rule provision. In three of these states it appears that no case directly in point has arisen; but in the State of Washington the courts have laid down the broad doctrine that under the home rule amendment a general law enacted by the legislature to apply to all cities or to all cities of a given class will always override a municipal charter or acts done under a municipal charter.

Contradictory experience with financial limitations.—Experience under the various financial restrictions described above has been so confused and contradictory that it is well nigh impossible to give a simple account of what the consequences of these restrictive measures have been. Moreover, when tax limitations, debt limitations, and mandatory expenditures are imposed upon cities concurrently it becomes exceedingly difficult to trace results back to any one of them as the sole or major cause. In the paragraphs that follow an attempt will be made to summarize some of the principal consequences of the financial disabilities of American cities, but the reader should be warned that the discussion is not exhaustive and probably will not be wholly applicable to conditions in every state.

Experience with tax limitations.—(1) Tax limitations, contrary to all expectations, have not been productive of economy in municipal government. Thus one of the chief arguments for tax limitations breaks down under the test of experience. Nothing is more conclusive on this point than the legislative investigation in Massachusetts in 1912 which revealed the fact that the cities of the state which had not been subjected to tax limitations were being more economically governed than those which had been so circumscribed. As a result of this investigation all tax limitations were abolished in Massachusetts, except for the city of Boston, which for special reasons was not emancipated. Confirming the conclusions of the Massachusetts inquiry is a careful study of a special joint committee of the New York legislature in 1920. This committee arrived at the conclusion that tax limitations upon cities are utterly futile as a means of forestalling extravagance, and made a striking comparison of the financial

experience of five cities with and five without tax limitations. Over the eight-year period covered by the study, the per capita operating expenses of the unlimited cities remained constantly lower than those of the limited cities, and the per capita indebtedness of the unlimited cities beginning at a higher figure fell to a lower figure in the limited cities. Reports similar to these, although not based upon such careful studies, come from all over the country.

(2) Tax limitations have seriously crippled municipal services. Most American cities have been growing very rapidly, and with this growth has come a demand for increased fire and police protection, better conservation of public health, improved and extended recreational facilities, closer supervision and control of public utilities, cleaner and better lighted streets, more efficient removal of garbage and waste, and a score of other extended municipal activities. Tax limitations have proved to be a serious obstacle to the provision of such services in accordance with the demands of the people. It has been possible to get along fairly well for a time by financing largely by loans, but eventually the debt charges cut down the revenue available for current purposes to such a degree that services must be curtailed or a way found to surmount the limitations. That this has been the experience of scores of cities official reports and investigations in great number testify; but the citizen who is not in the habit of getting his information from documentary sources frequently has more convincing proof in the shape of offended olfactory and visual senses.

(3) Owing to tax limitations it has frequently been impossible for cities to obtain revenues sufficient to make provision for necessary increments to their sinking funds;

and consequently they have often been obliged to refund their debts contrary to good financial practice.

(4) Tax limitations have not been successful in producing full assessment of property for purposes of taxation. Testimony on this point is somewhat conflicting, although the balance appears to be in favor of the declaration as made. It is easy to suppose that the pecuniary embarrassments occasioned by a restricted rate of taxation would cause the boosting of the assessed valuation in order to enjoy the resulting increase of revenue, but this has not always been the case. In many cities the assessment of property is not made by the municipal authorities, but by county or state officers who prefer to ingratiate themselves with the people by keeping assessments low despite the requirements of municipal government. Furthermore in the great majority of places the machinery and methods of assessment are so crude and unscientific that full assessment is impossible even when desired.

(5) Tax limitation laws have brought great embarrassment upon state legislatures because of the importunities of cities seeking relief from the consequences of the limited tax rate. In states where the limit is imposed by the constitution there is no recourse to the legislature for relief; but in states where the limitation is imposed by the legislature every session of the legislature is deluged with bills designed to exempt this or that expenditure from the tax limit, or to revise the tax limits generally, or to give the people a chance under certain circumstances to vote themselves outside of the tax restrictions. Acceding to these requests year after year means eventually complete abandonment of the principle of tax limitation; refusal to accede to them means renewed pressure and further complication of the difficulties of municipal finance.

Experience with debt limits.—(1) Debt limitations have had a tendency to check extravagant and reckless borrowing. With city government operated by elected officials who must be politicians and frequently are demagogues, there is always the danger that borrowing will be resorted to in order to postpone the day of reckoning with the taxpayer and to create the impression that the operating cost of government is being kept low. Debt limitations, when sufficiently low, have had a discouraging effect upon such political tactics.

(2) Debt limits have not infrequently had the effect of restraining cities from embarking upon elaborate programs of public ownership and operation of public utilities. Although there are commonly exemptions in favor of waterworks, and occasionally for other utilities, indebtedness incurred in the acquisition of utilities is usually included in calculating the aggregate indebtedness. Thus with debt limits kept comparatively low our cities have usually lacked the credit necessary to construct or purchase public utilities. Beyond question the influence of privately owned public utility corporations has had much to do with the establishment and maintenance of such debt limitations. Indeed one sometimes wonders whether it has not been influences of this sort rather than any inherent antipathy to poor financial management that has induced state legislature to subject cities to such rigid restrictions.

(3) Debt limits with a proviso for exceeding the limit by favorable vote of the people have as a rule proved illusory. In cities an ever-increasing proportion of the people pay no direct taxes, and consequently are not reluctant to vote for bond issues. Add to this condition the fact that the influences of organized labor, of contracting firms, and of dealers in materials and supplies is in-

variably enlisted in support of such bond issues, and it is not difficult to understand why reference to the electorate is not an effective safeguard against an expending indebtedness. This also explains the tendency to require extraordinary majorities for exceeding the debt limit, or to confine the vote to taxpayers.

(4) Liberal debt limits have a disposition to discourage the pay-as-you go policy and to put the stamp of approval upon indebtedness for almost any purpose up to the amount of the indebtedness permissible under the law. Few cities have been able to resist the temptation to bond themselves to the limit, so great is the inclination to shift the burden of governmental cost to future generations.

(5) The relation between debt limits and the assessment of property at full value appears not to be greatly different from the condition that prevails in the case of tax limitations.

(6) Evasion of debt limits has become a fine art in some states. Numerous loopholes have been opened up by the disposition of the courts to be easy in determining what constitutes indebtedness within the meaning of the laws; in computing the amount of indebtedness actually outstanding at a given time, or in interpreting the exemptions or exceptions.

Experience with mandatory expenditures.—The obvious effect of expenditures imposed upon the city by legislative mandate is to deprive the city authorities of discretion in deciding whether and to what extent such expenditures are desirable or necessary. It may be that state legislatures possess superior qualifications for making such decisions, but one who has had much experience with state legislatures will not readily succumb to this conviction. Where the expenditure pertains to a function which

the city performs for the state there may be a measure of justification in such high-handed procedure; but with reference to purely municipal functions it cannot but be regarded as vicious. It has tended to discourage careful budget-making on the part of municipal authorities; and because of limitations upon revenues it has not infrequently resulted in the slighting of essential municipal functions to provide for less essential but mandatory expenditures.

An economic interpretation of the financial disabilities of cities.—Without raising the question of the legal right of the state to impose rigid constitutional and statutory restrictions upon cities in financial matters, or the wisdom of so doing, we may venture the opinion that the multifarious financial restrictions imposed upon American cities owe their origin not so much to the state's interest in sound municipal finance as to the political machinations of certain economic interests. It has already been suggested that debt limitations may to some extent be attributed to the pressure upon state legislatures and constitutional conventions of the public utility interests which desire to debar cities from entering the field of public ownership and operation. Tax limits, in some cases, are known to have resulted from the influence exerted by realty and industrial interests in their endeavors to shift the burden of taxation. Mandatory expenditures, too, are frequently found to be the outcome of pressure brought to bear upon the legislature by certain cohesive groups hoping to profit thereby, such as the organized firemen, policemen, or school teachers. On the other hand, the attempts to break down the financial restrictions upon cities often come from organized interests which may be benefited by the result. Organized labor, contracting firms, and even banking institutions have been known to

use their influence to obtain relaxation of debt and tax limits when it seemed to their advantage for the city to increase its income or indebtedness. The point to bear in mind is that the financial disabilities of cities are often not so much the result of superior wisdom applied to the solution of governmental problems as the by-product of a perennial political struggle between competing and conflicting economic interests.

Administrative *vs.* legislative limitation.—Before leaving this subject we should raise the question whether the European system of financial control of cities through central administrative agents is not superior to the American system of control through constitutional or statutory enactment. In favor of the former it may be argued that it is elastic, continuous in operation, and expert. It makes it possible to deal with each city as a separate case on its own merits, to exert the control constantly through administrative officers instead of sporadically through judicial process, and to give the city the benefit of the judgment and advice of trained experts in municipal finance. The American system fails in all of these particulars. It is inflexible and arbitrary. It is enforceable only through the slow and uncertain processes of the courts. And the terms of the financial limitations imposed cannot be said to be the result of the mature judgment of men who have given long and special study to the problems of municipal finance.

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CHAPTER XV

MUNICIPAL REVENUES

The depreciation of the dollar and the loss of income from liquor licences have painfully aggravated the perennial problem of municipal revenues. The search for new sources of revenue is prosecuted with desperate vigor, and meanwhile cities are muddling along with all sorts of temporary expedients to avert impending ruin. Wholesale refunding of loans, where debt limitations have not prevented, has afforded momentary relief in many cities; but this, of course, is merely borrowing trouble for the morrow. Where tax limitations have not barred the way, tax rates on real and personal property have been lifted to levels far beyond all previous estimates of what such property could bear; and now, with the advent of a period of deflation, there is grave doubt as to the possibility of maintaining such rates. In other instances efforts have been made to increase revenues under a fixed rate by raising the assessed valuation of taxable property, but in most cases it has not been possible to enhance the appraisals sufficiently to produce the amount of revenue needed, and in many cases since the onset of the financial depression it has been necessary to reduce assessments. All cities, to a greater or less degree, have met their financial embarrassments by reduction of services, deterioration of administration, abandonment of projected improvements, and general curtailment of the efficiency and adequacy

of governmental functions. It would be accurate to apply the hackneyed word "crisis" to the distressing financial situation of American cities owing to the inadequacy of their avilable revenues, were it not that the crisis has become a chronic condition for which no specific cure has yet been found.

The sources of municipal revenues in the United States.—The great bulk of the revenues of American cities is derived from taxes levied upon real and personal property, and the ratio of income from this source has increased since the Eighteenth Amendment to the Federal Constitution cut off the income from liquor licenses. Owing to the discontinuance of the Census Bureau's *Financial Statistics of Cities* there are no general data on this subject of more recent date than 1919. The figures published for that year showed that the average proportion of the revenues of all American cities of 30,000 or greater population that is drawn from the general property tax is 65.5 per cent. The remaining 34.5 per cent. represented a great variety of revenue sources, the largest single item being 10.5 per cent. for the earnings of public service enterprises. Reports from a number of cities seem to indicate that the general property tax is furnishing an increasingly greater share of municipal revenues and that new sources of revenue have not been developed to any extent. Business and other license taxes constitute a considerable portion of the revenues of many of the Southern cities, but the objections to this form of taxation are so deep-rooted that it has made no progress outside of the South where it is traditional. Cities in a few states derive liberal revenues from the income tax, which usually is administered by the state government and apportioned among the cities, but this plan has not achieved wide-

spread popularity. Aside from the foregoing sources, the income of American cities comes in driblets from fines, forfeitures, escheats, subventions, interests, rents, charges for highway privileges, earnings of general departments, and other widely dissimilar sources. The burden on the general property tax is more than it should bear, and yet that burden is increasing.

The sources of municipal revenues in Europe.—We have very little information about municipal taxation in Europe during and since the war, and travelers who have had opportunities for observation have been preoccupied with the more spectacular problems of national finance. In respect to sources of revenues, however, European cities offer substantially the same contrasts to American cities that they did before the war. Instead of depending upon direct property taxes for two-thirds or more of their income, European cities seldom derive more than one-third of their revenues from such sources and obtain the bulk of the remainder from income taxes, indirect taxes, and the earnings of public service enterprises which are municipally owned and operated. The direct tax upon property is not regarded as the backbone of the city's revenue system, but simply as one of several principal sources of income. European cities have been encouraged to engage largely in what is known as "municipal trading" in order that the earnings of municipal utilities might serve to ease the burden of taxation, and no great weight has been attached to the argument that this policy results in shifting too large a part of the burden of governmental costs to the shoulders of the consumer. In addition to the earnings of municipal property and enterprises, European cities have other important sources of revenue that have not been tapped to any extent in the United States. In

Germany the income tax has been one of the major sources of municipal income, and this has been supplemented by the industrial tax, which is a tax levied upon industries on the basis of invested capital or net annual profit; the department store tax which is paid on the basis of the annual sales of certain commodities; and multifarious liquor taxes. In France cities have in addition to the direct property taxes and the earnings of municipal property and utilities, the *octroi* or municipal entrance duties, which are levied upon foodstuffs, fuel, building materials and other commodities as they come into the city; the various excise taxes upon wines and spirits; the taxes upon signs, sidewalk privileges, posters, street-stands, and many other such objects; and the municipal taxes upon public utilities when privately owned and operated. The direct tax in England is not upon the capital value of real property, but upon the rental value and is paid by the occupant of the premises. In addition to this the English city enjoys a large commercial income from its property and public utilities, and is greatly aided by subventions from the central government for such purposes as education, police, and maintenance of the poor.

Proposals for a sound system of municipal revenues in the United States.—It is difficult to get any two authorities on the subject to agree as to the structure of a model revenue system for American cities, but there is substantial unanimity on a few major points.

(1) It is almost universally agreed that the tax on personal property should be abandoned. It is held to be inequitable, impracticable, and not sufficiently productive to justify the cost of administration. No form of taxation has been more universally condemned, and probably none presents more objectionable features.

(2) It is quite generally conceded that the tax on real property should be the cornerstone of the municipal revenue system. There is no other tax that possesses quite the simplicity, productivity, and the flexibility that this does. Just what proportion of the revenues of the American city should be derived from this source is an actuely controversial subject, but we may hazard the guess that it will be a long time before it is less than one-half.

(3) There is very little inclination to increase the ratio of revenues from the earnings of publicly owned and operated utilities. And even if public ownership should become far more general than it now is, it is very doubtful if there would be any disposition to make them more than self-supporting. The American theory of public ownership is that utilities are owned and operated by the city for the benefit of the consumer both as regards service and rates, and hence that they should not aim at making profits which might be applied in reduction of taxes.

(4) The income tax is being widely favored to supplement the tax on real property. In the cities where the salaried and professional classes and corporate interests are concentrated, ability to pay taxes is by no means measured by ownership of property, either real or personal. The income tax taps this rich source of revenue, and has the advantage of being fairly simple to administer. The leading authorities are agreed that this tax should not be locally administered, but that the proceeds should be collected by the state and distributed in whole or in part to cities and other local units.

(5) We enter the realm of controversy when we consider the other taxes that have been suggested as essential to a sound system of municipal revenues. Numerous committees and commissions investigating the subject

have advocated the business tax, and equally numerous and equally authoritative committees and commissions have repudiated this suggestion as inherently unsound and inequitable. Some authorities have championed a classified tax on tangible personal property, while others insist that the exemption of personal property must be complete. Arguments are also made for the franchise tax or some other form of special tax upon public service corporations, and arguments are made against such taxes. Habitation and business occupation taxes have been urged by investigating committees in some states, and have been viewed as utterly unsuitable in other states. The poll tax has been ardently advocated by some and given a place entirely out of proportion to its importance or revenue possibilities.

(6) It is generally agreed that no great expansion of municipal revenues can be expected by increasing fees for licenses, permits, concessions, and the like. The primary purpose of all such charges is regulation and control, and it is legitimate and advisable to place the charges high enough to cover the cost of inspection and supervision. But there is always a point above which such fees cannot be raised without diminishing the aggregate return because businesses and occupations will be discouraged if the charges are too high. American cities charge license or permit fees for dogs, vehicles, taxicabs, buildings, excavations, sewer connections, pawnbrokers, peddlers, second-hand dealers, junk dealers, dance halls, pool-rooms, bowling alleys, theaters, moving picture houses, and for many other purposes.

(7) New sources of revenue that have been discovered recently in a number of American cities are: taxes on billboards and signs, taxes on street-railway advertising,

taxes on street encroachments, participation in motor vehicle licenses, and cigarette taxes.

The question of the separation of state and local revenues.—The question of the separation of the sources of the revenues of the state and its political subdivisions deserves passing notice in connection with the subject of municipal revenues. There has been a belief that many of the ills and embarrassments of cities in revenue matters are atrributable to the fact that the state, the city, and other local units all derive revenues from the same sources; and consequently there has been an effort in many states to assign to counties and cities certain sources of revenue that will not be touched by the state and to the state certain sources of revenue that will not be touched by the local units. The common basis of division has been for the counties and cities to take the general property tax and for the state to take the inheritance tax, the corporation tax, the automobile tax, the tax upon insurance companies, and various forms of excise taxes. Several states, notably California, New Jersey, Delaware, Ohio, New York, have applied this principle with considerable faithfulness and have furnished experience from which students of taxation have drawn the following conclusions: (1) that complete separation is neither practicable nor desirable, the first because the sources of revenue assigned to the state are rarely found to be adequate and the second because a certain degree of central control over local taxation seems to be essential to good administration of the tax laws; (2) that partial separation to make possible local freedom of action and the adjustment of the scheme of taxation to the economic character of each community is highly desirable, though somewhat difficult to apply in practice.

The administration of the real property tax.—Since

the real property tax is to be regarded as the principal source of municipal revenues in the United States, the question of the efficient administration of this tax is of no small importance. There are few things that we have done worse in this country than the administration of this universal form of taxation. In all of the states the tax on real property is required to be levied upon the basis of the capital value of the property, and this necessitates as the first and fundamental step in the administration of the tax, the valuation or assessment of the property. If the methods of assessment are unsound and defective, the result will inevitably be inequity and injustice in the distribution of tax burdens, as well as failure to produce the amount of revenue that ought properly to be forthcoming. Yet despite this obvious truth, there are very few places where progressive and scientific methods of assessment have been applied.

One thing upon which practically all authorities on taxation are agreed is that there can be no approximation of sound assessment unless the law requires that all real estate shall be appraised for taxation at its full value. Opinion on this point is unchanged by the fact that many of the states specifically authorize assessments at less than true value, while others not expressly commanding full valuation permit undervaluation by administrative action. Upon what basis full value should be determined is a matter of local law and practice. Sale or market value is the most common standard, and is found to be practicable in the great majority of cases. But whatever the standard it should be rigidly adhered to, because experience abundantly proves that under-assessment always results in inequalities between different taxpayers and different districts.

Another point of agreement among thoughtful students of taxation is that the work of assessment ought always to be committed to persons especially trained for the task. The elected assessor with no experience or qualifications than those of partizanship and vote-getting, and the appointed deputies of such assessors, have been responsible for most of the backwardness of American cities in adopting improved methods of assessment. Any one who takes time to study even slightly the problems of appraising land and buildings in a modern city will quickly conclude that it is a task for an expert. Unfortunately in most states the people cling tenaciously to the belief that the elected assessor is one of the bulwarks of their liberties, not realizing that many of the most grievous inequities under which they writhe are traceable to the incompetence not to say machinations, of the politician-assessor and his deputies. That there are a few notable exceptions to this generalization merely serves to emphasize the truth of it because they are so few. It is also quite commonly agreed that for administrative efficiency the staff of assessors ought to be organized under a single responsible chief, instead of under a board, as is the practice in many cities. The chief value of a board is to review the original assessments, and a board for this purpose can be provided without placing it at the administrative headship of the department. It might be added that in a great many states the function of assessment devolves upon the county and not upon the city, and that in such cases the city government has virtually nothing to do with the process of assessment or the organization of the assessing department.

In addition to these requirements good administration of the real property tax calls for the use of certain well-

developed expedients for the determination of unit values and for the calculation of the aggregate value of each parcel of property. The first requisite is an adequate system of tax maps showing by block and lot each parcel of property to be assessed with proper boundaries and dimensions. With this equipment it is possible to proceed intelligently with the determination of land values in all parts of the city. It is agreed that value is wholly a matter of opinion, and therefore care must be taken to bring to the assistance of the assessors every kind of opinion and evidence of opinion that will throw light upon the true value. Among the best guides to true value are sales (where information as to the true consideration can be obtained), the testimony of real estate brokers, builders, architects, and engineers, rentals, and bank appraisals for mortgages. All such information must be used with caution and with care to make corrections which special conditions may dictate; but it is upon the basis of such information that the unit values of land and buildings must be reached.

The unit value of land is usually expressed as so much per front or unit foot, which is simply the value of a parcel of land with a frontage of one foot on the street and extending back from the street 100, 125, 150 feet or whatever lot-depth may be taken as the most convenient for use in the particular city. Land value maps should be constructed showing the front or unit foot value of land along both sides of every street in the city. It is then comparatively an easy task to calculate the value of any particular plot or parcel. If the parcel is an inside lot of standard depth, it is only necessary to find the number of front feet and the aggregate value is easy to figure. If the particular parcel is not of standard depth certain rules are applied

for scaling the value up or down according to depth. All of these rules are based upon the hypothesis that the front part of a lot is more valuable than the rear and that the value declines progressively with the distance from the street. They are generally worked out as tables of percentages of the value of the standard for lots varying in depth from the standard. The so-called Hoffman-Neill rule originated and is used in New York, the Lindsay-Bernard rule in Baltimore, the Zangerle rule in Cleveland. If the lot is a corner lot in a business district, then all assessors agree that its value is enhanced by the corner location and that additions must be made for this factor. Various percentage rules have been worked out for calculating the increment of value attributable to corner influence of which the best known are the Somers rule, the Zangerle rule, and the Bernard rule. Rules have also been developed for the valuation of various kinds of irregular parcels, but they are all somewhat too technical for treatment here.

The reader has probably been wondering what is the advantage of such elaborate methods for determining value as compared with the simple process of relying upon the judgment of the assessor and other competent persons as to the aggregate value of any particular parcel of property. The answer is that by the methods described every piece of property is handled in the same way and that the caprices of human judgment are reduced to general rules which bear upon every taxpayer alike. It is difficult for the taxpayer to claim that he has been discriminated against when shown that his property has been assessed by the application of uniform rules which have been applied to his neighbors. Still another advantage is the elimination of the variations of judgment of individual

assessors working in different parts of the city. The same factors and the same rules are applied in all sections of the city. A further gain is the practical elimination of under-assessment. If the unit values are accurately decided, there can be no escape from full assessment. There is also a great gain in accuracy both in the location of property to be assessed and in the computation of assessments.

The unit of value in the case of buildings is the square foot of floor area, although in exceptional cases the cubic foot is used. The usual method is to classify buildings into several groups and sub-groups according to type of construction and then to arrive at unit values for various types by taking into account a large number of factors such as reproduction cost, suitability to site, depreciation, rentals, sales, and the like. Usually a unit value is fixed for the first floor and progressively smaller unit values for each floor above the first. Equipped with these data it is not difficult for the assessor to arrive at an unbiased and fairly accurate estimate of the value of any building. Rule-of-thumb methods which yet prevail in most cities are neither accurate nor fair in their results.

We have thus outlined the principal features common to all progressive systems of real estate assessment. In all systems there are scores of important details which cannot be dealt with in a brief discussion of this kind. The references at the end of this chapter show where detailed information can be obtained.

Special assessments.—It is impossible to leave the subject of municipal revenues without a word as to special assessments. According to the latest report of the United States Bureau of the Census, cities in this country derive, on the average, about 5 per cent. of their total revenues

from this source. A special assessment is simply a special charge against a certain parcel of property for benefits conferred by some improvement or betterment. From time immemorial it has been customary in England and this country to defray the costs of certain public improvements by levying all or part of the cost of such improvements upon the property supposed to be benefited thereby. It has become traditional that street improvements are to be paid for in this way, and we have also become accustomed to seeing a large part of the cost of sewer construction defrayed in the same way. In recent years there has arisen a tendency to resort to special assessments to cover the cost of many other forms of public improvement, as the establishment of parks, boulevards and civic centers, street lighting, extension of public utility services, docks, piers, and other waterfront improvements. To what extent the principle of special assessment may properly be applied to improvements of such character is a much mooted question, but it seems certain that we have been far too conservative in the past and that the general property tax might be relieved of a considerable burden if a more liberal policy of special assessments were adopted.

Aside from questions of legality, which are now fairly well settled in all jurisdictions, there are many vexing problems of administration involved in special assessments. The common requirement of the law is that assessments shall be distributed in proportion to benefits conferred by the improvement. Sometimes methods of measuring the benefit and distributing the tax are specified in the law of the state or the charter of the city, and again the methods are left to the choice of those administering the tax. Perhaps the most common method has been to lay the assessment on the property abutting the improvement,

each parcel sharing in proportion to its frontage on the improvement. This obviously is a crude method of distribution which leads to all sorts of injustice. It will work well when all parcels of property fronting the improvement are of equal depth and of regular shape and are all affected by the improvement in precisely the same way, but not under any other circumstances. Another method is to spread the assessment upon abutting property in proportion to area. This system is open to quite as many objections as the frontage method. Area can be taken as a criterion of benefit conferred only when all of the abutting parcels of property sustain about the same relation to the improvement as to location, frontage, and service received. A third method of distribution is in proportion to the assessed valuation of land at the time of the improvement, and it is perfectly apparent that variations in assessed valuation prior to the improvement are by no means necessarily correlated with variations in benefit conferred by the improvement. Assessed valuation subsequent to the improvement would appear to be a much fairer criterion, but any sort of apportionment on the basis of valuation is defective in that differences and fluctuations in value arise out of complex causes which may have little to do with the benefits conferred by a public improvement. Indeed it is possible to conceive of situations in which the most valuable pieces of property would be the least benefited by an improvement. A method of distribution that has been advocated as more nearly approximating justice than any other is distribution on the basis of proximity to the improvement. It is based upon a recognition of the general truth that benefit varies somewhat with proximity and that not only contiguous but somewhat remote property may be specially

benefited by the improvement. It is this principle which underlies the zone system which is used in Seattle and the district system which is used in many cities for park levies. It is upon this principle also that the mathematical system recently worked out and applied in Flint, Michigan, is founded.

The application of the foregoing and other principles of spreading assessments and the problems of reviewing and adjusting assessments and financing and directing the improvement are among the most exacting that the city government has to perform, and they require all of the intelligence and patience that trained and experienced officials can give.

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CHAPTER XVI

THE MUNICIPAL BUDGET

The magnitude and variety of the expenditures of the modern city are simply amazing. The reported expenditures of the City of New York for 1919 were $245,963,030, and of 132 cities of over 50,000 population only three reported expenditures aggregating less than a million dollars in 1919. The aggregate expenditures reported by 227 cities having a population of 30,000 or more for 1919 were $1,233,111,835. Whether a city be small or large its annual expenditures generally exceed those of any other enterprise, public or private, within its corporate boundaries, and are of infinitely greater variety and complexity. Not until one realizes that the average city employs lawyers, doctors, engineers, teachers, policemen, firemen, nurses, accountants, clerks, stenographers, inspectors, mechanics, carpenters, plumbers, chemists, laborers, and scores of others; that it operates hospitals, sanatoriums, schools, libraries, museums, water-supply systems, electric light and power systems, prisons, employment agencies, playgrounds, markets, and many other enterprises; that it constructs sewers, paves streets, erects buildings, lays out parks and boulevards, and undertakes many other huge engineering projects; that it purchases fuel, groceries, hardware, electrical supplies, automobiles, automotive accessories, oils, greases, medicines, drugs, furniture, stationery, furnaces, building materials, and thousands

of other commodities—not until one has some conception of these facts is he able to appreciate and interpret statistics of municipal expenditure.

Spending without planning.—It might be supposed that the complexity and volume of municipal expenditures would result in careful and systematic methods of spending, but such has not been the experience of most American cities. Laxity of procedure in municipal finance has been matched only by the prodigality of expenditures. The power of appropriation has been lodged with the city council without any safeguards or restrictions that would necessitate careful planning of expenditures on the basis of genuine needs and avilable income, and the abuses that have arisen are almost too numerous to be catalogued. Ward politicians and other special interests have engaged in a perfect carnival of log-rolling at the expense of the vital needs of the city; heads of departments have deemed it their business to get and spend as much as possible without regard to actual needs or general policies; aggregate expenditures have been authorized with little or no thought as to the income available to meet them or the possible effect on the tax rate; appropriations have been made in lump without any knowledge of the exact purposes for which they would be used; appropriations have been made to continue year after year at a given sum without regard to the effect of changing conditions; deficits occurring before the end of a fiscal year have been met by supplementary appropriations or by the issuance of deficiency bonds. In short, instead of exercising the prudence and foresight that a person of average thriftiness would use in his private affairs, our cities have pursued the spendthrift methods of a youth at the wild-oats stage.

Spending without control or responsibility.—It has been

characteristic of the loose financial methods of American cities that no precaution has been taken to definitize and fix responsibility for extravagance and mismanagement and to establish control over those responsible for expenditures. The responsibility of the council has been taken for granted, although belied by the facts. Under the ward system each member of the council is responsible to his own small constituency, but his responsibility consists chiefly of getting as much as possible for his ward regardless of the condition of the city treasury. He is only in small part responsible for the general financial program of the city, and as long as he can maintain himself in his ward this can be ignored. Under the system of electing councilmen at large, responsibility is almost as badly diffused as under the ward system. Councilmen elected at large are seldom elected by the vote of a majority of the municipal electorate, and by pluralities composed mainly of the solid vote controlled by certain special groups or interests. Their allegiance, and real responsibility, is therefore to these groups or interests—often minorities—which hold the balance of power. Sole or chief responsibility in financial matters does not devolve upon any single member. The reaction against councilmanic mismanagement of municipal finances has resulted, in many places, in further decentralization of responsibility and attenuation of the lines of control. Jurisdiction over certain functions, as education, parks, public works, has been taken away from the council and conferred upon boards with independent financial powers. The result has been confusion worse confounded; for every such board has more or less imitated the city council in matters of financial procedure.

The budget movement.—About the beginning of the

present century a movement for financial reform in municipal government spread over the country. The slogan of the movement was "Efficiency and Economy," and its principal achievements were the improvement of municipal accounting systems and the adoption of some sort of budget system of financing. Budget reform had been urged for many years by students of municipal problems, but had never become a popular issue. The rapid spread of the commission plan of city government with the attendant impulse to adopt better business methods, and the extensive educational work done by the New York Bureau of Municipal Research with its publications and its surveys of scores of cities, as well as the persistent propaganda carried on by bureaus of municipal research established all over the country after the pattern of the New York organization, stirred up public sentiment on the question of budget reform; and there is not now a city of magnitude in the country that has not taken some steps toward the adoption of a budget system.

What is a budget?—The word "budget" is a much abused term, and its meaning has been the subject of acrimonious controversies among experts. Historically the word seems to have been derived from the French "bougette," a descriptive term applied in early English parliamentary history to the huge leather bag used to carry the documentary material presented to Parliament in explanation of the financial resources and needs of the country, and for that reason literalists still insist that a budget is nothing more than a batch of explanatory documents presented to a legislative body along with a proposed appropriation bill. Such refinements of usage tend to confuse rather than clarify, and there is no sound principle behind them. The English system of financial procedure

has come to be known popularly as the budget system, and any system that embodies the essentials of the English system can be correctly called a budget system. The important thing is to know what those essentials are.

The essentials of a budget system.—(1) The cardinal principle of the English budget system is complete and unequivocal centralization of financial responsibility. In order to accomplish this, the initiative in proposing taxes and expenditures for all purposes is taken from Parliament and conferred upon the Cabinet acting through the Chancellor of the Exchequer. Parliament may refuse to pass the measures proposed by the Cabinet, or may decrease them as to amount, but there can be no increases without the consent of the Cabinet. This means that absolute responsibility for determining the amount of public expenditures for any and all purposes, and for determining the amount of tax levies, is centered upon the Cabinet and cannot be evaded. In the last analysis it is centered upon the Prime Minister who forms the Cabinet and must stand or fall with it. On account of this focussing of responsibility upon the Prime Minister and the Cabinet, the English system has become known as the executive budget system. In introducing the budget idea into American cities we have compromised on this point more than on any other. Our traditional distrust of executive power and our check-and-balance structure of government have betrayed us into sacrificing the principle of executive responsibility in budget making. Instead of locating responsibility directly and completely upon the mayor, various expedients have been tried. Some cities, like New York, place budget making responsibility upon a specially constituted board of which the mayor is a member; others, as San Francisco and St. Paul divide it be-

tween the comptroller or auditor and a committee of the council; and others, as Cleveland[1] and Boston, make the mayor responsible for preparing the budget, but allow the council a free hand in revising it. In no city is executive responsibility developed to the point that it is in England.

(2) The second basic principle of the English system is that the responsible budget-making official presents for consideration at one time a comprehensive proposal for financing the government for a definite period. This proposal embraces all expenditures proposed for that period and all proposed taxes, loans, or other means of providing income to meet the proposed expenditures. Thus there is presented to the legislative body a complete and balanced financial program for a definite period, which may be viewed as a whole or viewed in detail. Every phase of the proposed financial program may be considered on its own merits and in relation to the whole program. The proposals as adopted will set the limits of taxation and expenditure for a fixed period of a year or more. This necessitates careful planning of work in advance and the accurate forecasting of financial requirements on the basis of work to be done. In other words the budget proposals constitute a work-program expressed in terms of finance. American cities in installing budget systems have not always strictly observed this principle. It is not at all uncommon to find that the so-called budget is so far from being regarded as a complete and definitive financial program that supplementary appropriations are readily and frequently granted subsequent to the adoption of the budget. This practice is inconsistent with the

[1]Since Jan. 1, 1924 the responsibility for preparation of the annual budget in Cleveland has been placed on the city manager.

fundamental idea of the budget system; namely, rigid adherence to a spending plan predicated upon a careful forecast of needs. The argument that supplementary appropriations are necessary to care for unforeseen and unforseeable contingencies is entitled to little respect, because although specific contingencies may not be prophesied from year to year the aggregate amount of contingent expenditures under normal conditions is constant enough to be accurately estimated and provided for in the budget. Another respect in which municipal budgets often fail to comply with the principle set forth above is their failure to embrace all of the city's financial operations. Education is now almost universally set apart from other municipal functions with separate government and independent financial powers. The same thing is often true of parks, public works, street improvements, and other functions. One city a few years ago boasted of a budget system which embraced the financial operations of only four of nine departments. Only by virtue of poetic license could such a scheme be called a budget system.

The process of budget making.—The process of budget making may be treated under three heads, each of which is capable of infinite subdivision. The first stage of the process is the formulation of the budget; the second is the consideration and adoption of the budget or appropriation bill; and the third is the execution and enforcement of the budget act by appropriate accounting procedure. Each of these should be considered in detail.

The preparation of estimates.—The initial step in budget making is preparing the estimates of revenues and expenditures for the ensuing year. This is obviously an executive function for which the executive branch of the

city government should be held strictly responsible. Neither the council nor a committee of the council is in a position to forecast accurately and authoritatively the income and expenditures of the year to come, because such estimating depends upon first-hand knowledge of work done, work in progress, and work to be done. If such information is available at all, it exists in the executive branch of the government. The chief executive (mayor, city manager, or whatever his title) should be made responsible for the preparation and submission to the council of complete estimates of revenues and expenditures together with a proposed appropriation measure and proposed revenue-raising measures so far as those are within the jurisdiction of the city government.

These estimates will not of course be made by the mayor in the first instance, but by department heads and bureau chiefs in charge of various phases of the work of the city. It has become customary to collect these estimates on standardized blank forms which are of great value in securing uniform and specific information. Estimates of expenditures should come from every office or department that will be responsible for expending moneys during the ensuing year, but estimates of revenues should come only from the finance department which can ascertain the aggregate revenue to be expected from taxation, and from those departments which have earnings.

The consolidation and review of the estimates.—The estimates as submitted on the original forms by the various departments and divisions constitute the basic information for the budget, but in order that there may be an intelligent understanding of the whole financial program it is necessary to assemble the principle data contained by all of the estimate sheets, and thus to evolve what are known

as the consolidated estimates. This is purely a clerical task, and is usually performed in the central financial office of the city. When the estimates have been duly consolidated there arrives one of the critical stages of the budgetary process—the shaping of the estimates into a well-balanced and carefully articulated financial plan. This must be done, if at all, by the responsible maker of the budget. In cities which have a real executive budget it is the function of the mayor; in other cities a board of estimate or a committee of the council performs this function; and in a great many cities it is not performed at all, the consolidated estimates being submitted without any serious attempt at critical review and revision. But obviously unless there is a process of careful reconsideration and readjustment, the budget will be merely an aggregation of departmental requests; and there will be no definite and single reponsibility for results. Heads of departments, divisions, and offices are always tempted to exaggerate the importance of their own special branches of the administration and to overestimate their financial requirements; and if there is no check upon them and no possibility of revision of their estimates before they go to the council, they easily succumb to this temptation, and are further tempted to resort to lobbying and log-rolling to get their estimates approved by the council. Review by a board of estimate, a board of control, or a committee of the council is better than no review at all; but review by an administrative superior, as the mayor or city manager, is the most effective of all because of the unescapable responsibility of the chief executive and the power that he possesses to probe to the bottom of every proposal made by his subordinates and to punish those who do not act in good faith. From this standpoint the best budget

making in the United States is being done in the cities under the manager form of government.

The form and content of the estimates.—There has been no more fruitful source of controversy among budget specialists than the question of the form and content of the budget estimates. In this outline, therefore, we shall deal only with matters with reference to which there is substantial agreement. It should be borne in mind that one of the principal purposes of a budget is to produce information with reference to proposed expenditures and financial policies that will enable the council and the public clearly to comprehend the meaning and effect of such expenditures and policies if adopted. For this reason it is believed that the estimates should be set forth in sufficient detail and classified in such a way as to bring out the information essential to an intelligent interpretation of the proposed financial program.

One of the queries that naturally arises in the mind of a person seeking to understand a complicated financial proposal is, "What are you going to get in direct return for the moneys to be expended?" In other words, it is desirable to have information as to the objects of expenditure, and this is the justification of the so-called "object" classification of budget estimates. It would be too confusing to catalog in detail the object of every proposed expenditure, but if all can be grouped under a few leading heads it is conducive to clear thinking about financial activities. Many different forms of object classification have been worked out by students of budget procedure. The following, adopted in Dayton, Ohio, in 1915, is fairly typical: (A) *Personal Service*, including salaries and wages; (B) *Contractual Services*, including transportation, communication, insurance, and other service perrormed

by other than municipal departments; (C) *Sundry Charges*, covering contributions, debt service, pensions, depreciation, taxes, etc.; (D) *Supplies*, embracing commodities which show an appreciable change or impairment of their physical condition after use; (E) *Materials*, being commodities of a permanent nature in a raw, unfinished, or finished state which are to be used in construction, repair, renewal, or replacement of lands, buildings, or structures; (F) *Equipment*, comprising live stock, furniture, machinery, implements, and the like which may be used repeatedly without appreciable impairment of their physical condition and having a calculable period of service; (G) *Lands*, *Buildings*, and *Structures* when obtained by purchase.

Another question that will arise in considering financial proposals for the operation of a city government is, "How much is to be expended by each branch and department of the government?" The answer to this is furnished by the classification of proposed expenditures according to organization unit, showing the total for each distinct branch, department, division, or office.

"How much is to be expended for each of the major services rendered or functions performed by the city government?" is another question that is likely to arise in connection with the appraisal of a proposed plan of expenditures. To supply an answer to this question the so-called functional classification of expenditures has been advocated. There is no agreement among authorities regarding an exact classification of municipal functions, but the following, which is employed by the United States Bureau of the Census, illustrates the idea: *General Government*, executive, and judicial services of general character; *Protection of Person and Property*, covering police, fire

and inspectional services; *Conservation of Health*, which includes expenditures for enforcing pure food laws, preventing and suppressing communicable diseases, vital statistics, etc.; *Sanitation and Promotion of Cleanliness*, covering sewers and sewage disposal and the collection and disposal of refuse and waste; *Improvement and Care of Highways; Charities, Hospitals, and Corrections; Education*, which includes schools, libraries, and museums; *Recreation*. It is apparent that when the structure of the city government follows functional lines there would be little gain in having a classification both by function and by organization unit.

Another form of classification of expenditures that is sometimes advocated is what is termed a classification by "character," although that term does not give a key to the real significance of the classification. From an administrative standpoint it is believed to be important to set out the distribution of the proposed expenditures in accordance with whether they are to be used for maintenance and upkeep, for current operation, for capital outlays, and for fixed charges; and that is what the "character" classification endeavors to do.

The classification of revenues need not be so elaborate. There is but one important fact to be brought out with regard to revenues, and that is the sources from which they are to be derived. A classification of revenues according to source will show, for example, the amounts to be derived from taxation, licenses, earnings of municipally owned utilities, loans, etc.

Supplementary data.—In addition to the foregoing information with reference to the proposed revenues and expenditures, certain data with regard to the financial condition of the city are desirable in connection with

the budget. The New York Bureau of Municipal Research in the course of a large number of surveys and studies of municipal finance has recommended the following:[1]

(1) A balance sheet, showing the city's resources and what it owes.

(2) An operation account, showing in comparative form how the city's revenues and expenses have accrued during the past year or two, and the estimated accruals for the next year.

(3) A surplus account, showing whether there has been a net increase or decrease in the current surplus or deficit.

(4) A debt statement, showing the gross and net indebtedness of the city together with the extent of its borrowing power under existing statutory or constitutional limitations.

(5) A fund statement, showing the condition of all general or special funds.

(6) A comparative summary of estimated and actual revenues and expenditures for the two years preceding and the estimated revenues and expenditures for the ensuing year.

The form of the appropriation bill.—The appropriation bill or ordinance should be predicated upon the estimates and the data supporting the estimates. It should be formulated by the mayor, manager, or board of estimate and, together with the documents referred to above, should be presented to the council for action. It is agreed that the appropriation ordinance should not take the form of requests for gross or lump sums but should be sufficiently itemized to allow the council to exercise its judgment in every matter essential to control of financial policy. There has been much difference of opinion as to the form this itemization or segregation should take. At one time it was held that the allocation of appropriations should be according to function, but this view no longer

[1]See *Municipal Research*, No. 57.

generally obtains. It is perceived that the value of the itemized appropriation measure is that it facilitates effective control over the determination and execution of financial policies, and that control must be exerted upon responsible officials by limitation of their authority to spend for specific objects. Functions being in many cities purely conceptual and not identical with lines of organization, official responsibility is diffused rather than definitized by a functional segregation of the appropriation ordinance. The better practice, therefore, is to distribute appropriations first according to organization units, so that there is a responsible official for each item; and then to limit the discretion of every such official by a secondary itemization according to object of expenditure. Thus each spending officer is made responsible for the expenditure of so much for personal services, so much for contractual services, so much for supplies, materials, and equipment, and so much for various other objects in accordance with the terms and conditions of the appropriation act.

The budget message.—It is a distinctive feature of the English budget system that the presentation of the budget in the House of Commons is made the occasion for an elaborate speech by the Chancellor of the Exchequer, in course of which he explains and defends the financial program embodied in the budget. In the United States such a budget speech is usually precluded by the chasm which exists between the executive and legislative branches of government, but sometimes an executive budget message is substituted for the speech, although in the great majority of instances this message is nothing more than a perfunctory letter of transmittal. This is one of the weak points of budget procedure in American cities. An executive message always commands public attention to

an extraordinary degree, and a clear and forceful budget message can be of immense value in centering the attention of both the council and the public upon the salient and significant features of the proposed financial program. Increases can be explained and savings pointed out; varying conditions can be emphasized and needs can be made clear; the status of uncompleted projects can be set forth and their progress reviewed—these and many other matters can be brought out more effectively by a budget message than in any other way.

The consideration and adoption of the appropriation bill.—The procedure of the council when the appropriation bill comes to it for approval is a very important factor in the budget system. Except in a very few instances we do not have in this country the English rule that the executive estimates may not be increased, and consequently city councils are in the habit of taking a good deal of liberty with the proposals of the executive. The first step in councilmanic consideration of the appropriation measure is examination by the finance committee, and is of vital importance whether this occurs *in camera* or in open session. All committee hearings should be publicly conducted after notice duly given, and all decisions of the committee should be publicly taken and the vote recorded. It goes without saying that the committee should have power to summon any witnesses or obtain any information deemed essential to an intelligent analysis of the proposed measure, but where the executive has taken pains to supply comprehensive documentary information of the kind outlined above this power will be very little used. The chief executive or any of his subordinates at his direction should be entitled to appear before the committee at any time to explain or

defend items under consideration, and any citizen ought to have the right to appear before the committee to voice his opinion of the measure in whole or in part. When the deliberations of the committee have ended, a report will be made to the council, and it is likely that this report will recommend many amendments. If the council functions as a real deliberative body, there will be ample opportunity for debate on every part of the measure, and for offering amendments from the floor. When it comes to the vote on the final passage of the measure, the common custom is to vote on the measure as a whole. This is expeditious, but it is also somewhat conducive to a log-rolling tactics. The better method, perhaps, is first to take the vote by section and then on the whole measure.

The enforcement of the appropriation act.—To insure the execution of the financial program as embodied in the appropriation act it is necessary to incorporate in the act safeguarding restrictions and conditions regarding the expenditure of the sums appropriated and to have an adequate system of appropriation accounts. No fixed rule can be laid down with respect to terms and conditions in the appropriation act, as the requirements will vary somewhat from city to city. It is customary, however, to attach stringent restrictions upon transfers from item to item within a particular department or division, and from one department or division to another. If this were not done, the whole purpose of budget making could be defeated by administrative transfers after the adoption of the appropriation act. It is likewise common to have restrictions as to the amount to be expended each month or each quarter and prohibiting overdrawing. The enforcement of these and other conditions and provisions of the appropriation act may be accomplished by a system

of appropriation accounting administered by an independent auditor or comptroller. When the appropriation act has passed, accounts are set up in the office of the comptroller, crediting the various departments, divisions, and offices with the amounts allotted to each for various purposes by the appropriation act. No expenditure can be made from any of these appropriations without the approval of the comptroller, and therefore every warrant drawn upon the treasurer is checked up by the comptroller. If there are no funds to the credit of the drawer or if it is drawn for a purpose not provided for in the appropriation act, the comptroller will not approve it and it cannot be paid.

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CHAPTER XVII

MUNICIPAL PURCHASING

A MODERN city with its utilities, hospitals, prisons, market houses, police and fire services, parks, museums, libraries, schools, engineering and construction activities, and various governmental functions, far surpasses any private corporation in the quantity and variety of its purchases of supplies, materials, and equipment. From tacks to tigers, seeds to surgical instruments, photographs to fire engines, fuel to furniture, stamps to steel there is virtually nothing in the way of foodstuffs, fuel, dry goods and clothing, hardware and machinery, live stock, drugs and chemicals, construction materials and supplies that a city is not called upon to buy. Millions of dollars are annually expended by every considerable city in the country in the purchase of inestimable quantities of supplies, materials, and equipment of every conceivable kind and character. And in purchasing there is probably more opportunity for waste, extravagance, and corruption, as well as opportunity to achieve striking economies, than in any other municipal activity.

Municipal purchasing methods.—In view of the foregoing facts it is surprising, indeed shocking, to discover that a great many American cities do their purchasing by methods long since abandoned by every efficiently managed business concern in the country. Mr. A. G. Thomas, in preparing his book on *Principles of Government Pur-*

chasing, received reports from 113 cities, and of this number only 64 had taken any steps toward central purchasing, which is universally conceded to be the only system whereby municipal purchasing can be efficiently and economically done. And of the 64 reporting some progress toward central purchasing not many had gone far enough to compare favorably with central purchasing in private enterprise. The decentralized, departmental system of purchasing is traditional in American cities and is seemingly very difficult to dislodge. Cities cling to it long after it is apparent that it results in dispersion of responsibility, duplication of effort, incompetent buying, extravagance, and even corruption. It maintains a strong hold upon the affections of the politician type of public official because it readily lends itself to the uses of that system of rewards and punishments which forms so large a part of the strategy of organization politics.

The advantages of central purchasing.—The advantages of central purchasing for cities upon which substantially all authorities are agreed are as follows:

(1) It unifies responsibility for purchasing, and thus eliminates duplication and reduces the number of persons engaged in purchasing work.

(2) It makes it possible to secure and develop experts who are specialists in market conditions, trade practices, and purchase procedure, and who are qualified to protect the interests of the city in matters that the inexpert department head would overlook.

(3) It makes it possible for the city to buy in large quantities and thus get the benefit of wholesale prices, trade discounts, and the like.

(4) It facilitates the standardization of the grades and varieties of articles and commodities to be purchased, and

so makes it possible to secure a more uniform and better quality of goods.

(5) It makes possible a more accurate approximation of the actual consumption of each commodity to be purchased, and thus tends to eliminate under-buying and over-buying.

(6) It produces real competitive bidding.

(7) It greatly reduces the opportunities for favoritism, jobbery, and corruption.

The essentials of a central purchasing system.—The first requisite of a system of central purchasing is an organization set up for that special purpose and equipped with authority and with facilities that will enable it to do the city's purchasing efficiently. Opinions differ widely as to the type of organization best suited for central purchasing. The board type is favored in a number of cities because of the legal restriction which requires competitive bidding and compels the awarding of the contract to furnish articles to the city to the lowest responsible bidder, but with the proviso that certain exceptions may be made at the discretion of purchasing authorities of the city. It is felt that the consideration of bids, the determination of who is the lowest responsible bidder, and the decision on questions of waiving the competitive bidding rule are deliberative functions that a board can perform better than a single officer. Quite frequently the composition of the board is of *ex-officio* character, and there is a permanent secretary who is the real administrative head of the purchasing system. New York, San Francisco, and Baltimore are cities in which the board type of organization is found. In some cities, as for example Minneapolis and Chicago, there has been created a separate department of purchases coördinate with the other principal

administrative departments of the city. In other cities a division or bureau of purchases has been set up in a pre-existing department. This scheme prevails in Cleveland, Milwaukee, and St. Louis. Where the purchasing department or bureau has a single head, it is common to confide the awarding of contracts to some sort of *ex-officio* board like the board of control in Cleveland which consists of the mayor and the heads of the executive departments. That the authority of the central purchasing agency ought to include everything pertaining to the complete purchasing process is a proposition that is scarcely debatable; and yet it is a common weakness of central purchase organizations that they have little power beyond that of securing price agreements.

Standardization of commodities used and of specifications describing commodities is another essential of effective central purchasing. So long as a dozen different grades and brands of inks are used through the department and offices of the city where one or two would do as well, there can be no quantity buying and no realization of that uniformity of high quality which is so much to be desired. Nor can there be an assurance that the personal whims and preferences of department and division heads are not being used to cover transactions involving peculation. What is true of one is true of all commodities. It is therefore desirable to decide upon a few types and grades of each commodity purchased by the city in large quantities and to require the use of these standard commodities throughout the entire city government. To assist vendors in complying with these standards and to facilitate the inspection of commodities delivered there should be devised a standard description or set of specifications for each commodity purchased, which should be

used in advertising and should be furnished to bidders and vendors. A good example of standard specifications for a standardized commodity is the following taken from the specifications for groceries and canned goods purchased by New York City:

Mixed Pickles (domestic pack); to be delivered in so-called pint bottles and one-gallon pails, as called for in schedule. The mixture shall consist of 33 per cent. of cauliflower bulbs, 8 per cent. of white pickled onions $\frac{1}{2}$ inch in diameter, 17 per cent. of whole gherkins, not less than $1\frac{1}{2}$ inches long, and 42 per cent. of cucumbers, a part of which shall be cut lengthwise and a part crosswise, averaging $\frac{3}{4}$ to $1\frac{1}{2}$ inches in length; to be packed in pure malt vinegar containing $5\frac{1}{2}$ per cent. acetic acid at packing.

Sound purchasing procedure must exist for a central purchasing system to be completely successful, but the problem of purchasing procedure is too technical and too highly specialized to be treated in detail in a study of this kind. It centers about the processes and methods employed in ascertaining the kinds and quantities of commodities to be purchased and the frequency with which they will be needed, in ascertaining current market conditions, in securing free and full competition, in handling bids, in negotiating with vendors, in issuing purchase orders, and other matters of such character.

The inspection of deliveries is another important element in the operation of central purchasing. There must be inspection to determine both the quantity and quality of the goods delivered. The check as to quantity is seldom more than a clerical matter requiring a count and record at the point of delivery to furnish data for comparison with the original purchase order. But the check as to quality is often a difficult and technical proceeding.

Quality cannot always be ascertained by mere physical examination and sometimes can only be discovered by use or consumption of the goods. Purchasing by sample is one of the methods of facilitating inspection for quality, as conformity with the sample is a test easily applied in many instances. There are a number of important commodities, however, whose quality can only be ascertained by laboratory test. This is notably true of fuel—coal or oil—of which every city is a large purchaser. In the case of coal, for example, specifications as to grade, size, quantity of dust, etc., all have a certain value, but the only absolute test of the quality of coal is the heat units it will produce; and for that reason many cities now buy coal on a British Thermal Unit basis and enforce the specifications by laboratory tests of coal delivered. In like manner oils, greases, foodstuffs, drugs, and many other commodities can be best inspected by laboratory tests; and when the city is a large purchaser of such commodities the laboratory test is a vital factor in economical buying. The question has often been raised as to whether inspection of goods received should be conducted by the purchasing department or by the several departments and agencies to whom the goods are delivered. There seems to be little doubt among authorities on the subject that if not conducted directly by the purchasing department, inspection should at least be conducted under its supervision; for the purchasing department is in possession of more information regarding all sorts of commodities and is in a better position to determine methods and standards of inspection than any other department.

The operation of central stores is often mentioned as one of the prime essentials of a central purchasing system, but it is a feature that has not been as much developed in

cities as in private enterprises. The chief advantage of operating central stores is that the purchasing department is enabled to buy in large quantities at the time when the market may afford the most favorable prices, and then to store the commodities to be issued to the various departments as they are required for consumption. The majority of cities prefer to contract for delivery as goods are required for consumption rather than to maintain large stores; despite the fact that the vendor will be inclined to charge slightly higher prices when he has to carry the cost of storage. It may be that the cost of stores administration would offset the savings resulting from purchasing for single delivery. Aside from small stores of stationery and office supplies, few cities make any attempt to operate central stores. Another advantage of central stores that perhaps deserves to be mentioned is that delivery at one point at one time greatly simplifies the problem of inspection and is conducive to greater efficiency in inspection. It must be recognized, however, that it would be impracticable to carry out such a plan with all commodities.

Importance of prompt payment of vendors.—The official red tape usually involved in the transaction of municipal business often operates to put the city at a disadvantage in the market and to compromise the success of central purchasing. This is particularly true of the tortuous and long-drawn-out procedure often used in the payment of vendors who have delivered goods to the city. A survey of the city of San Francisco in 1916 disclosed the fact that dealers who had made deliveries to the city were obliged to wait an average of 45 days to get their money, during which time they had to make several trips to the city hall to sign documents. This instance could no

doubt be duplicated in many other cities. Under such conditions dealers cannot well afford to do business with the city or to give the city the benefit of low prices. The dealer generally has a considerable sum of money tied up in the goods he delivers to the city, and during the time that he must wait for payment he not only loses the interest on such sums but often loses the chance of profitable reinvestment. Central purchasing can hardly be expected to produce striking economies in the face of such handicaps.

Funding central purchases.—For central purchasing to operate with maximum efficiency the purchasing department must be able to take prompt advantage of every turn in the market, and in the case of commodities which rapidly fluctuate in price this is absolutely indispensable to economical buying. The slow routine necessary to draw upon the various departmental appropriation accounts and make the proper charges in each case often acts as an obstacle to speedy pursuit of market advantages by the purchasing department. This difficulty has been met in private corporations and in some cities by the establishment of a rotary fund for the use of the purchasing department. This fund is charged with the purchases as they are made, and then, as the supplies are issued to the various departments, the rotary fund is credited and the departmental appropriation accounts are charged. Such a fund would of course be useful only in the case of purchases requiring immediate action and perhaps spot cash.

Central purchasing and budget making.—Efficient central purchasing can contribute much to the successful working of the budget system. As has been shown above, budget making is bottomed upon accurate forecasting of future financial requirements, and in so far as the ex-

penditures of the ensuing year are to be for the purchase of supplies, materials, and equipment the purchasing department can produce information as to supplies on hand, rates of consumption, and probable market trends that is of incalculable value in checking up on departmental estimates. Furthermore, the economies attainable under central purchasing make possible closer figuring on budget estimates. On the other hand, the successful operation of central purchasing is in a measure dependent upon the character of the budget system. In ascertaining the amount of each commodity to be purchased, the purchasing department must be guided by budget estimates and allowances; and if the budget system is loose, the purchasing department will be handicapped.

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CHAPTER XVIII

MUNICIPAL INDEBTEDNESS

In a small American city there was once an exceedingly clever young merchant. He was a sharp buyer, a splendid salesman, and a hard worker. Starting with nothing but a little borrowed capital, a pleasing personality, and a keen perception of sound merchandising principles, he achieved sudden and striking success. With increasing success his credit expanded, and likewise his ambitions. Having been impressed by that deceptive platitude of the business world that credit is the key to all big accomplishments, he concluded that credit was the open-sesame for him. It seemed unfitting that a successful merchant of of his caliber should live in a cottage on The Flats, so he went into debt and built a mansion on The Hill. It seemed equally *déclassé* for him to drive a Ford, so he went into debt and bought a Pierce-Arrow. He felt also that his stock should be enlarged and diversified, so he went into debt and added many new lines of goods. Then it became necessary to provide more store space and additional fixtures, so he went into debt and remodeled his store. Thus he sailed serenely ahead piling debt upon debt, until one day he made the startling discovery that his credit was no longer good. He owed more than he owned, and his interest payments consumed nearly all he earned. With this realization he made desperate efforts to retrieve his solvency, but it was too late. One morning

the sheriff decorated his store with a notice to the world that his creditors had declared him bankrupt; and thereafter he had leisure to study interest tables and reflect upon the relation between debts and deficits.

The debt situation in American cities.—This little allegory represents quite well the debt situation of the average American city. The path of indebtedness has proved so seductive that cities have not become conscious of the perilous plight to which it was leading them until it was too late to turn back. There are no data showing exactly the relation between debt charges and the cost of municipal government throughout the United States, but conservative computations based upon the Census Bureau's *Financial Statistics of Cities* indicate that on the average debt obligations covering principal and interest constitute not less than 25 per cent. of the annual cost of city government. In many prominent cases the proportion of annual expenditure on account of "debt service" is much higher than this average figure. In 1920 approximately 40 per cent. of the aggregate sum appropriated for municipal expenditures in the city of Chicago was for the payment of debt charges; in New York City in 1921 the proportion of the annual expenditures devoted to "debt service" was 31 per cent.; in Cleveland in 1922 debt obligations claimed practically 51 per cent. of the annual expenditures. In March, 1922, the Ohio Institute of Public Efficiency issued a bulletin showing that there were at that time 48 cities in the state of Ohio in which more than 50 per cent. of the annual income was required to meet debt obligations; that in 8 of these cities more than 70 per cent. of the annual income was so encumbered, and in 4 of them more than 80 per cent.

It is no idle matter for a city to be using a fourth of its

income to meet debt obligations, and when it is obliged to devote from a half to three fourths of its income to such purposes, its predicament is well-nigh calamitous. Let us try to visualize in a practical way what such a state of affairs must mean. A city government exists to perform services that are vital to the life and well-being of the inhabitants of the city, and if it is a growing city the effective performance of these services becomes increasingly imperative as the size of the city increases. Naturally the ability of a city to meet these demands is measured by its income, and the extent to which its income can be reasonably expanded. And if too large a part of its income is required for the liquidation of indebtedness incurred in the past, its ability to meet the demands of the present is proportionately curtailed. This unhappily has come to be true in a great many American cities. Undermanned police departments, dirty and ill-paved streets, uncollected garbage, overcrowded hospitals, unkempt parks, unequipped playgrounds—these are some of the common testimonials of the fatuous financing which has allowed indebtedness to accumulate to the point where interest and amortization make huge inroads upon operating income.

Why cities borrow.—Two questions must be answered in order to explain how cities acquire such a crushing burden of indebtedness: (1) Why cities borrow, and (2) Why cities borrow *excessively*. The answer to the first question is that cities, like individuals, have needs which it does not seem possible or prudent to finance out of current income, as, for instance, the construction of a city hall, a high school, or a water reservoir. It appears to be a question of deferring the satisfaction of the need until the necessary money can be accumulated, or of immedi-

ately satisfying the need and deferring payment by borrowing. The second question is not so readily answered. It is easy to explain and justify borrowing as policy in municipal finance, but why cities borrow excessively and to the point of virtual insolvency is often difficult to understand. Perhaps the underlying explanation is that the line of least resistance leads to borrowing. Just as the installment plan of paying for merchandise tempts many people to purchase far beyond their ability, because it is so easy to pay a few dollars down and have immediate enjoyment of the articles purchased, so the ease of borrowing betrays cities into unwise and excessive indebtedness. But there are political aspects of the matter to be kept in mind also. Those who govern our cities and determine their policies are almost without exception politicians and partisans. Good political strategy calls for a big showing of results without a marked increase of taxation; and borrowing is ideally suited to such a game. By borrowing, most striking and spectacular results may be achieved within a short time, and amortization of the debt so deferred as to relieve the tax rate of any considerable burden until after the politicians who perpetrated the coup are all out of office or dead. Thus borrowing may enable politicians to ingratiate themselves with the public and at the same time conceal the results of their own extravagance and mismanagement; and consequently borrowing is recklessly practised by municipal authorities whose dominant thought is of present political exigencies. It should be remembered also that the results of municipal borrowing are generally very gratifying to large sections of the public. Investors who purchase municipal securities and bankers who are paid for floating municipal loans would be curiously disinterested if they did not favor and

encourage municipal borrowing. And likewise contractors and workmen are likely to be gratified by municipal borrowing because extensive public improvements rebound to their advantage. The combined power of such forces is almost irresistible. We must recall, too, the insidious nature of financing by borrowing. The cumulative effect of unwise and unsound borrowing may not be felt for many years, and then when an acute situation develops it may be met by refunding, thus easing the situation for many years. So the day of reckoning can be postponed and postponed and the public lulled with a false sense of security, until finally a grave crisis impends and the full meaning of the city's condition becomes clear.

Should cities borrow?—One cannot contemplate the present debt situation in American cities without wondering whether it is sound policy for cities to borrow at all. So numerous are the possibilities of abusing public credit, and so insidious are the temptations of financing by loans, that many persons take refuge in the dictum that municipal borrowing is on the whole unwise and unjustifiable. Such an opinion may be warranted by the facts as they exist in numerous cities, but whether it is tenable as a general rule of municipal financing is a question that involves fundamental principles of finance.

It is unnecessary to remind the reader that there are several kinds of borrowing, each of which involves different principles and therefore calls for separate consideration. Borrowing in anticipation of revenues is quite a common practice, and, if surrounded by adequate safeguards, cannot be open to serious objection. Such borrowing is often a most convenient and necessary expedient for meeting the temporary emergencies that arise because the regular flow of tax revenues does not come until well

after the beginning of the fiscal year of the city. Revenue loans of this sort, if properly handled, do not contribute to the permanent indebtedness of the city and may therefore be disregarded as a factor in the municipal debt problem. Aside from revenue loans, there are two kinds of borrowing that require special consideration from the standpoint of debt policy: (1) borrowing for productive purposes, and (2) borrowing for unproductive purposes. By productive borrowing we mean loans that are floated to enable the city to acquire properties that produce revenues, as waterworks, gas plants, and electric light plants. The considerations of principle and public policy involved in the flotation of such loans are very simple, provided of course the wisdom of municipal ownership is conceded. The indebtedness incurred for objects of this kind is amortized by the revenues derived from the operation of the property, and hence impose no burden upon the tax revenues of the city. The cost of indebtedness falls upon the users of the services of the utility, just as would be the case if it were owned and operated by a private corporation instead of by the city. If there are no objections to this allocation of the cost of financing, then there are cogent arguments in favor of borrowing for the acquisition of public utilities.

Borrowing money for the acquisition of properties which do not produce revenues, as a city hall, a police station, a library, or a park, is a much more difficult problem. The amortization and carrying charges on such indebtedness must be derived from the general tax revenues of the city, and under the laws of most states these obligations constitute a prior claim upon municipal revenues. It follows, therefore, that as the aggregate indebtedness grows, the amount of revenue produced by taxation must be in-

creased, or the sums available for current operation will suffer pronounced shrinkage. But this fact should not be taken as an argument against borrowing for non-revenue-producing purposes, for many properties that produce no revenue are just as essential to the well-being of the community as those which do. Consequently the choice is not between things that pay their own way and those that do not, but between things which cannot be readily and fairly financed by the tax levies of one or two years and those which can. To construct a public building or acquire land for a park requires a huge present outlay of cash, which, if paid out of the tax revenues of one or two years, would place a tremendous load upon the taxpayers of those years, for the acquisition of permanent assets that will be serviceable for many years in the future. Manifestly it is not unfair in such a case to spread the payments over a considerable period of years, in order to distribute the resulting tax burdens more equitably among the beneficiaries of the improvement. Borrowing the money required for immediate outlay and providing for the gradual amortization of the indebtedness so incurred will accomplish this, and will at the same time prevent those sharp fluctuations in the tax rate that cause intense dissatisfaction and resentment among the taxpayers. These are the considerations involved in borrowing for non-productive purposes; yet no sovereign rule for the guidance of municipal authorities can be laid down. Each case must be decided upon its own merits in view of the urgency of the proposed improvement, the permanence or impermanence of the resulting asset, and the financial condition of the city. There is probably nothing with reference to which circumstances alter cases quite so radically as municipal borrowing.

One further type of municipal indebtedness requires casual mention at this point. In many cities there is a constantly recurrent form of indebtedness arising from current deficits, overdrafts, unpaid bills, and the like. When indebtedness of this kind attains a certain magnitude it is the common practice to fund it, that is, to issue bonds running for a considerable period of years and use the proceeds to liquidate the accumulated debts. This of course does not retire the indebtedness, but merely changes its form. Ordinarily indebtedness of this kind is due to defective budgetary practices, and in most cities can be entirely done away with by the adoption of a scientific budget system.

Legal limitations on municipal indebtedness.—The debt-incurring powers of American cities are hedged about with innumerable legal restrictions, which render it impossible to generalize as to the extent or character of their capacity to borrow. In this regard European practice is strikingly different. Specific debt limitations of a statutory or constitutional nature are not imposed upon European cities, but discretion to regulate and restrict municipal borrowing is committed to administrative agents of the central government. Thus a European city, with the approval of the proper administrative authorities, can borrow for any purpose and to any amount; while an American city can only borrow within the limits as to purpose and amount prescribed by the constitution and statutes of the state or the charter of the city, as interpreted by the courts. Hence the debt problem of the American city is complicated by legal technicalities, which often transcend all questions of principle and policy.

It is an established constitutional doctrine in this country that municipal indebtedness must be incurred for a

public purpose. This follows as an inevitable corollary of the rule against taxation for a private purpose which the courts, both state and national, have repeatedly sustained. But when it comes to differentiating between a public and a private purpose, no lucid and consistent rule is to be found. All that can be safely said is that whatever the courts of a particular state declare to be a private purpose is not a purpose for which the cities of that state may borrow money, the courts of every other state to the contrary notwithstanding. The courts of Georgia, for example, hold that it is not a private purpose for a city to borrow money to establish a municipal ice plant, while the courts of Wisconsin, Louisiana, and other states ridicule this position and contend that such a loan would be for a private purpose. Similarly the courts of Massachusetts hold that borrowing for the establishment of a municipal fuel yard is for a private purpose, while the courts of Maine are equally confident that such borrowing would be for a public purpose. The whole matter in the last analysis is one of judicial dialectics, and is of interest to the layman only in its practical results.

Regardless of the public or private purpose of the object for which borrowed money is to be used, many state constitutions now contain specific provisions forbidding municipal corporations to lend their credit to private corporations or individuals. These limitations are, of course, an upshot of the era of wildcat finance during which cities recklessly employed their borrowing power to subsidize railroads and other privately owned and operated enterprises.

Another common restriction upon the borrowing power of cities is the requirement that provision for the payment of the debt must be made at or before the time the debt

is incurred. Whether imposed by constitution, statute, or charter, the effect of such a requirement is to make provision for amortization a prerequisite to the contracting of the debt, and thus to afford a basis for judicial invalidation of debts which fail to comply with the conception which the courts have of the meaning of the restriction.

Perhaps the most general stricture upon municipal borrowing power is the limitation of the amount of indebtedness which may be incurred. The usual method of limitation is to prohibit indebtedness in excess of a stated percentage of the assessed valuation of all taxable property within the city. The governing percentages vary between one and ten per cent. although in some cases they are placed higher. The great majority of states fix a low percentage, often less than five per cent. with the idea perhaps of affording an incentive to full valuation of assessed property. This scheme of restricting the aggregate indebtedness of cities, as will be observed, results in fluctuating rather than fixed limits. The controlling factor is the assessed valuation of property, which is often subject to considerable variations. Doubtless the theoretical justification for the correlation between debt limitation and assessed valuation lies in the assumption that the value of property is the best index of the city's ability to carry a burden of debt. If property were always assessed at its true value, this assumption might be justifiable; but when assessments represent only a fraction of real value, assessed valuation is not a reliable criterion of ability to carry indebtedness. The city which has been obliged to raise the level of its assessed valuation to approximately the real value of the property in order to obtain increased tax revenues, may be in a more

straitened financial condition than one which has been able to manage with the revenues produced by a low valuation. In such a case the expansion of the debt limits by reason of the increase in assessed valuation may tempt it to incur debts it is not actually able to carry. In other words, so long as the growth of assessed valuation does not mean an increase of real wealth, assessed valuation is a deceptive basis for the fixation of debt limits.

When such limitations upon the amount of municipal indebtedness are imposed by the state constitution, debts incurred in excess of the constitutional limit are absolutely void unless validated by some saving proviso in the constitution itself; but if the limitation is imposed by statute or charter, debts contracted in excess of the limitation may usually be legalized by subsequent legislative action. The legislature, unless forbidden by constitutional inhibition, may also give cities permission in advance to exceed debt limits fixed by statue or charter. In the majority of cases where debt limits are fixed, exemptions are made in favor of certain classes of debts, as debts for the acquisition of waterworks and other public utilities. The exemption is sometimes self-executing, and sometimes requires a favorable vote by the people to render it effective. It is common also to allow cities to increase their indebtedness beyond the prescribed limits for any purpose by means of a popular referendum. In the state of Washington, for instance, the total debt may be increased from two per cent. to five per cent. of the assessed valuation in this way.

If the reader is disposed to think that the legal limitations upon the borrowing power of cities render the municipal debt situation complex and difficult to under-

stand, let him reflect that only a few of the more striking limitations are here under review. There are limitations by the score that if introduced into a discussion of this kind would render it so prolix as to be almost unintelligible. All of these limitations are subject to judicial interpretation, and the result is a legal labyrinth that is often baffling to trained and experienced legal practitioners. One of the simplest judicial questions that arises is: "What is indebtedness within the meaning of the limitation?" The broad, if not ambiguous, language in which debt limitations are couched leaves even this fundamental question in doubt. Does indebtedness include municipal obligations arising from breach of contract? Does it include the obligation of the city to pay for land taken by eminent domain? Does it include the obligation to pay a judgment rendered against it? Does it include the obligation of the city to pay interest on its borrowings? The foregoing are typical of the many technical and often complex legal questions that have to be settled in connection with the application of constitutional and statutory limitations on municipal indebtedness.

The floating debt.—Municipal indebtedness generally assumes two forms, known as the floating debt and the funded debt. The floating debt consists of indebtedness of temporary or indefinite duration, for the redemption of which no systematic plan has been established. The floating debt usually includes such things as unpaid bills, overdrafts, judgments against the city, loans in anticipation of tax revenues, and other obligations of temporary character. The funded debt, on the other hand, embraces the indebtedness of fixed duration, for the redemption of which a systematic plan (as a sinking fund) has been

provided. The funded debt is represented by bonds, which are the city's written promise to pay a given sum at a stated time, and which obligate the city to pay a specified rate of interest until the maturity of the debt. For this reason the funded debt is sometimes called the bonded debt.

Floating indebtedness is commonly considered contrary to sound financial principles, and oftentimes cities are greatly circumscribed by legal restrictions upon their power to contract floating indebtedness. It must be admitted, however, that there is a legitimate place in municipal financial operations for temporary loans. It often occurs, for instance, that tax settlement dates do not coincide with the beginning of the city's fiscal year, and consequently the city has no income to meet its current obligations unless it can float short-term loans. Proper correlation of the tax year and the municipal fiscal year would, of course, obviate such difficulties; but the power to effect such an adjustment is frequently not in the hands of the municipal authorities. Again, it may happen that long-term bonds have been authorized, though only a small part of the proceeds is immediately necessary to pay contractors. If the long-term bonds are issued, the money derived from their sale will lie idle in the bank drawing a low rate of interest, while the city will all the time be obliged to pay a high rate of interest on the bonds. To avoid such an occurrence temporary notes can be issued from time to time as money is actually needed, and then when a sufficient amount of such notes has accumulated to justify the sale of bonds they can be issued to retire the temporary indebtedness. If the floating debt always represented transactions of this sort there would be little danger in it, provided, of course,

due precaution were taken to secure prompt retirement of temporary loans. But because of the relative ease with which floating indebtedness may be incurred and because in some cases it is not counted in computing the aggregate indebtedness allowed under debt limits, there has grown up a practice of contracting temporary debts heedlessly and for utterly unjustifiable purposes. Then when the floating debt has become quite large, authority may be secured to "fund" it, that is, sell bonds to retire the floating debt and establish a sinking fund for the liquidation of the bonds. Such abuse of the power to incur floating indebtedness is condemned by all competent authorities on municipal finance. Perhaps the best way and surest way to prevent it is to require the city to make provision annually in its budget for the retirement of the floating indebtedness of the preceding year.

The funded debt.—Three questions engage our attention in regard to long-term bonds: (1) By whom and in what manner should they be authorized? (2) How should they be redeemed? (3) How long should they run? The first question relates to rather a common type of restriction, by virtue of which bonds may not be issued at all, or may not be issued for specified purposes, without an affirmative vote of the electorate of the city. When such a vote is required, various formalities of procedure are generally prescribed, and if they are not observed the bond issue will be invalidated. Many states in their constitutions forbid a city to contract any debt whatsoever without a favorable vote on a popular referendum; others impose restrictions of this character only in case of borrowing for public utilities or borrowing in excess of the debt limit. In the last mentioned cases the prerequisite of a referendum is clearly consistent with sound

principles, because of the extraordinary nature of the questions involved. But in the case of ordinary bond issues the wisdom of a compulsory referendum is open to doubt. As a rule the people seldom take a deep interest in bond issues and only a small proportion of them vote on such questions. The average citizen has no way of getting at the facts which should govern his decision, except as they are supplied by others; and this often results in the injection of extraneous and irrelevant issues into bond elections, particularly when the question comes up at a general election. Moreover, the necessity of an election often causes serious delay and always means added expense. Probably a better method would be to allow municipal authorities to issue bonds in their own discretion for ordinary purposes, subject to a referendum on petition of a substantial portion of the voters.

The matter of the redemption of the funded debt raises vital question of policy. The customary method of retirement has been the establishment of a sinking fund to be augmented by regular contributions by the city and by the interest realized on the investment of the principal of the fund, so that when the bonds come due there will be in the sinking fund a sum sufficient to pay them. There are several dangers involved in the sinking fund method of amortization. There is the danger, in the first place (and it is not an imaginary one), that the annual increments to be supplied by the city from its tax income will be insufficient to meet the necessary actuarial requirements of the fund, with the result that it will be inadequate to retire the bonds at maturity. This may result from sheer ignorance or carelessness in failing to establish the sinking fund on a sound actuarial basis; it may result from shrinkage in the tax revenue due to

delinquencies in payment; or it may result from wilful misapplication to current purposes of money that should be devoted to sinking fund payments. Another danger in sinking funds that is far from unreal is the possibility of shrinkage in sinking fund resources owing to losses on investments. An added problem in the administration of sinking funds is the difficulty of safeguarding them so as to prevent municipal authorities transferring money from the sinking funds to current funds in order to tide them over the constantly recurrent emergencies of municipal finance. This practice not only interferes with the actuarial basis of sinking funds, but involves a danger that they will not be replenished. To these objections to the sinking fund method of amortization, add the fact that it is extremely expensive, both because it requires a very considerable organization to administer the funds and obliges the city to pay interest on the entire principal of the debt over the entire period of its duration, and you will then have a sufficient explanation of the existing dissatisfaction with sinking funds all over the country.

Recognizing the defects of the sinking fund method of amortization, numerous cities are supplanting it with the serial bond method. Under this plan, instead of all the bonds being issued to mature at the same time twenty or thirty years in the future, they are issued in series to be retired progressively throughout a given period of say, twenty or thirty years. They may be issued in annual series, a certain number being retired each year; or in biennial, triennial, quadrennial, quintennial, or even decennial series, as may be desired. Careful computations have shown conclusively that the aggregate cost of amortization is much less under the serial bond plan than under

the sinking fund plan. An investigation by the New Jersey Commission on Municipal Financing in 1915 showed a possible saving of from nine to twelve per cent. of the entire cost of amortization under the serial bond plan. In addition to noting this advantage the New Jersey Commission said:

> Bond houses, investors, and the officials of municipalities who have given this matter serious thought, recommend serial bonds for financing debt obligations.
>
> The favorable price at which serial bonds have sold in the past year proves their economic market value, and adds conclusive proof to the favor that this form of bond has with the buyers of municipal securities.
>
> The serial bond plan does away with all of the perplexities and risks of collecting, investing, and safeguarding the sinking fund. It eliminates the long chain of "*ifs*" that are present in the sinking fund plan. It provides a means of financing public obligations, with constantly decreasing carrying charges, and will go a long way toward putting municipalities on a "pay-as-you-go" basis.

The principal objection voiced against the serial bond plan has been that it results in the imposition of an unduly heavy burden upon the taxpayers in the years immediately following the issuance of the bonds, by reason of the progressive reduction of both interest and principal as series after series of bonds is retired. To many persons this does not seem a valid objection because they argue that in most cases the depreciation of the improvement is approximately correlative with the decline of debt charges, and consequently it is fair that the heaviest debt charges should fall in the early years when the improvement is most valuable and useful. If the objection is given weight, it can be met by distributing the maturities of the

bonds so that the debt burden will be equally distributed throughout the period or will concentrate in the later years.

The third problem in funding is that of the duration of the indebtedness. The sound principle is that the term of the indebtedness should be determined by the probable life of the improvement. On account of the unwillingness of municipal authorities to assume responsibility for budget increases, it is a principle that has been more honored in the breach than in the observance. Not only has indebtedness been incurred for articles of current consumption, but in the case of durable improvements the term of the indebtedness has been carried far beyond the life or usefulness of the objects for which the money was expended. The folly of going into debt to pay for articles currently consumed needs no comment. The unwisdom of extending the term of indebtedness beyond the life of the improvement is not so clear. The chief objection to it is that its cumulative effect is to place upon the taxpayers the burden of paying for benefits that are no longer existent and that they perhaps have not enjoyed. Recognition of the principle that the term of bonds should be governed by the life of the improvement is given partial recognition in the laws of many states which fix a maximum term of, say, twenty or thirty years. The State of Ohio in 1921 adopted a very comprehensive law on this subject which strictly limits the periods for which cities may issue bonds for various purposes. The law classifies the various objects for which bonds are ordinarily issued, and then fixes limits of thirty, twenty-five, fifteen, ten, and five years respectively for the bonds issued in each class. Bonds issued for purposes not specified are to be limited to the life of the improvement, which is to be

determined by the financial officers of the city, but in no case to be more than thirty years.

The pay-as-you-go policy.—Much has been heard in recent years of the so-called pay-as-you-go policy of municipal finance. Strictly speaking, the pay-as-you-go policy means the complete abandonment of borrowing, and the financing of all capital improvements by raising the money in the year or years in which the improvement is made. The only city of the country that has experimented with this policy in a large way is New York, and on account of political vicissitudes it was discontinued there before it had received a complete and conclusive trial. The theory of the pay-as-you-go policy is that in the long run it is more equitable and economical to pay for non-revenue-producing improvements from current income than from the proceeds of borrowing. The argument is that the pay-as-you-go policy not only saves the interest charges, but also the overhead expenses incident to the issuance, sale, and retirement of bonds and the administration of sinking funds. And it is claimed that in the larger cities where huge capital outlays are regularly necessary, the savings would be felt not at some distant future time but immediately. In fact, it is asserted that once a large city is put on a pay-as-you-go basis, it can provide for all of its necessary capital outlays from current income with no inconvenience whatever. It hardly seems probable that this policy will ever be applied universally to those exceptional public improvements which are necessary perhaps once in a half century, but as regards capital expenditures that recur annually and thus constitute a regular expense it certainly seems to hold much promise. The main difficulty in adopting the pay-as-you-go policy is the transition from the present credit

basis to this "cash-and-carry" plan. By gradual introduction in the years when no heavy debt maturities occur, it is believed that this transition can be accomplished.

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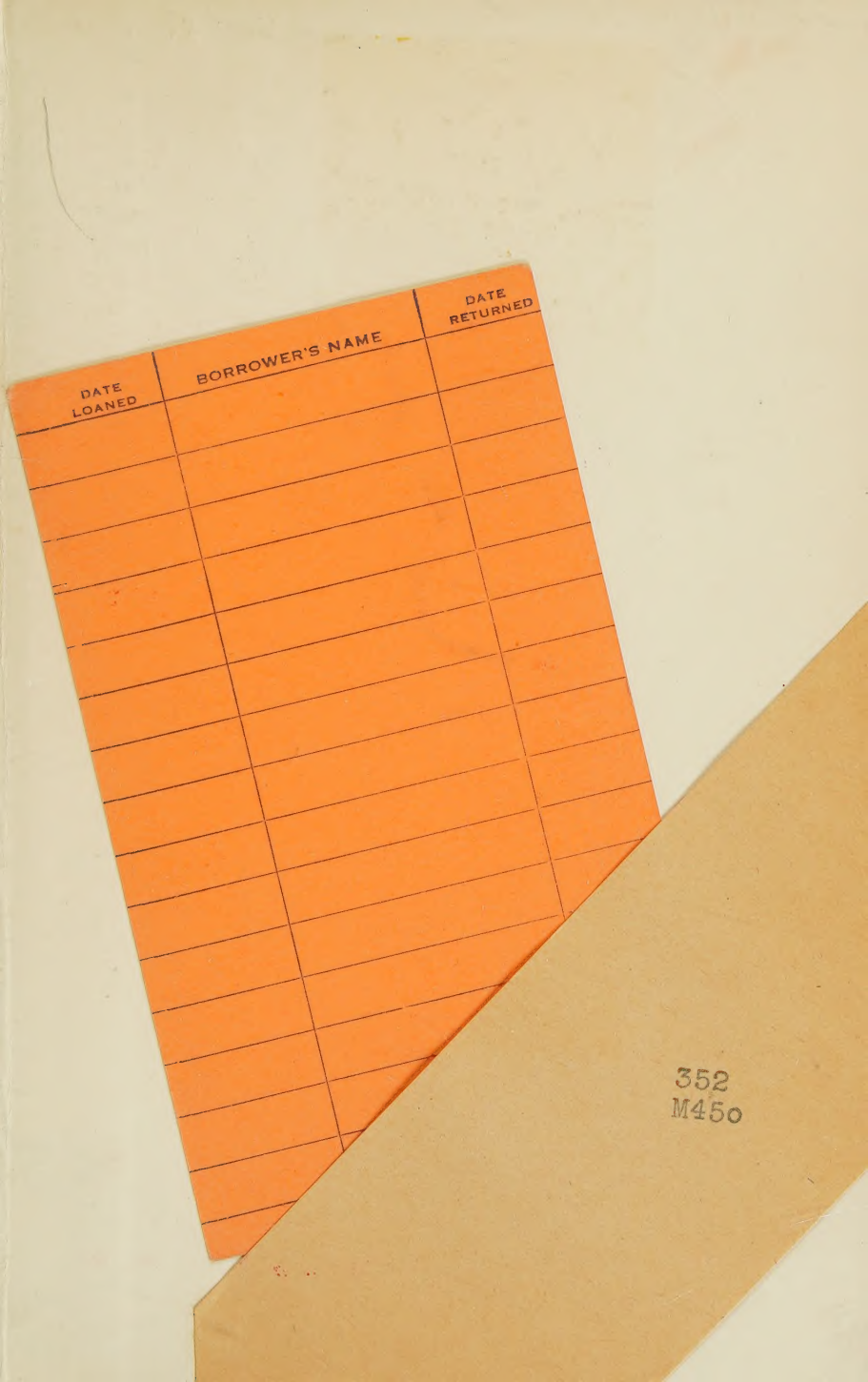
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